VA SCARCE MEDICAL SPECIALIST PROGRAM: ARE ETHICS POLICIES AND ENFORCEMENT ADEQUATE?

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

MAY 19, 1993

Printed for the use of the Committee on Veterans' Affairs

Serial No. 103-13

U.S. GOVERNMENT PRINTING OFFICE

69-715 cc WASHINGTON : 1993

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-041576-4

VA SCARCE MEDICAL SPECIALIST PROGRAM: ARE ETHICS POLICIES AND ENFORCEMENT ADEQUATE?

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

MAY 19, 1993

Printed for the use of the Committee on Veterans' Affairs

Serial No. 103-13

U.S. GOVERNMENT PRINTING OFFICE

69-715 cc WASHINGTON : 1993

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-041576-4

COMMITTEE ON VETERANS' AFFAIRS

G.V. (SONNY) MONTGOMERY, Mississippi, *Chairman*

DON EDWARDS, California
DOUGLAS APPLEGATE, Ohio
LANE EVANS, Illinois
TIMOTHY J. PENNY, Minnesota
J. ROY ROWLAND, Georgia
JIM SLATTERY, Kansas
JOSEPH P. KENNEDY II, Massachusetts
GEORGE E. SANGMEISTER, Illinois
JILL L. LONG, Indiana
CHET EDWARDS, Texas
MAXINE WATERS, California
BOB CLEMENT, Tennessee
BOB FILNER, California
FRANK TEJEDA, Texas
LUIS V. GUTIERREZ, Illinois
SCOTTY BAESLER, Kentucky
SANFORD BISHOP, Georgia
JAMES E. CLYBURN, South Carolina
MIKE KREIDLER, Washington
CORRINE BROWN, Florida

BOB STUMP, Arizona
CHRISTOPHER H. SMITH, New Jersey
DAN BURTON, Indiana
MICHAEL BILIRAKIS, Florida
THOMAS J. RIDGE, Pennsylvania
FLOYD SPENCE, South Carolina
TIM HUTCHINSON, Arkansas
TERRY EVERETT, Alabama
STEVE BUYER, Indiana
JACK QUINN, New York
SPENCER BACHUS, Alabama
JOHN LINDER, Georgia
CLIFF STEARNS, Florida
PETER T. KING, New York

MACK FLEMING, *Staff Director and Chief Counsel*

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

LANE EVANS, Illinois, *Chairman*

MAXINE WATERS, California
BOB FILNER, California
LUIS V. GUTIERREZ, Illinois
JAMES E. CLYBURN, South Carolina
MIKE KREIDLER, Washington
JILL L. LONG, Indiana

THOMAS J. RIDGE, Pennsylvania
SPENCER BACHUS, Alabama
TERRY EVERETT, Alabama
JACK QUINN, New York

CONTENTS

May 19, 1993

VA SCARCE MEDICAL SPECIALIST PROGRAM: ARE ETHICS POLICIES AND ENFORCEMENT ADEQUATE?

WEDNESDAY, MAY 19, 1993

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON VETERANS AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 8:30 a.m., in room 334, Cannon House Office Building, Hon. Lane Evans, (chairman of the subcommittee) presiding.

Present: Representatives Evans and Quinn.

OPENING STATEMENT OF CHAIRMAN EVANS

Mr. EVANS. Good morning and welcome. This morning the subcommittee is continuing its review of VA's scarce medical specialist contract program. There is some good news to report today.

Days prior to the subcommittee's 1992 hearing, after doing very little for five years, VA took action to begin correcting problems that have plagued the scarce medical specialty contract program for years. The actions taken by the VA last July have begun to produce results. The subcommittee strongly encourages the VA to continue moving forward with its effort.

The subcommittee also understands that VA physician pay reform is working. VA is now better able to recruit and hire physicians, including specialists, whose services were previously obtained by contract. VA reliance and spending on scarce medical specialist contracts can both now be reduced.

All the news, however, is not good. Nearly six years ago, in July 1987, I raised the issue of possible conflicts of interest in the scarce medical specialist contract program. In spite of the recent corrective actions taken by the VA, my concerns still exist. While other issues may be raised today by Members of this subcommittee, I hope this issue will be the focus of special attention.

This hearing is not an indictment of all VA employees and certainly not the countless thousands of VA employees who uphold the highest standards of ethical conduct and who provide the highest quality of care and services to our nation's veterans. By the same token, we can't simply close our eyes to the wrongdoing or the potential wrongdoing of a few because of the good done by so many.

This hearing is not being held to weaken or destroy the VA medical system. In fact, just the opposite is true.

According to a recent GAO report, some medical schools which have received VA contracts pay VA physicians who have contract responsibilities as much as $75,000 a year for part-time employment. In more than one case, the extra work to be done for that money couldn't even be described or identified.

Unfortunately, this practice doesn't appear to be isolated. When a practice is wrong, simply repeating it doesn't make it right. An unethical practice, even if it is part of the VA culture, is still unethical.

In addition to the facts, we must also be sensitive to public perception, confidence and trust. VA ethics standards require this vigilance.

While our examination today may consider many issues, we need to pay particular attention to contract-related duties of VA physicians who are also compensated by the contractor.

When the VA pays an affiliated medical school too much for contract services, that is lousy management. When an affiliated medical school pays a VA physician for work that can't be described, that is also lousy management.

When these practices are taken together, they raise an obvious question: are VA-paid excess contract costs being recycled as gratuities to VA employees?

I believe the VA can put its house in order. I am strongly committed to helping achieve that end.

The findings which have been presented to this subcommittee suggest several possible legislative initiatives. These include requiring part-time VA employees to request and obtain VA approval in advance for outside employment income; prohibiting full-time VA employees from accepting remuneration for outside employment; requiring VA employees who request outside employment income to make a full disclosure of material information; and last, but certainly not least, repealing VA's authority to negotiate contracts with affiliated schools of medicine and requiring competitive bids for all VA scarce medical specialist contracts. These initiatives may be considered in the future.

At this time I am very pleased to recognize the gentleman from New York for any opening comments that he might make.

OPENING STATEMENT OF HON. JACK QUINN

Mr. QUINN. Thank you, Mr. Chairman.

To reiterate some of what you have mentioned, in these times when our funding at the VA is always coming under question, and we are asked to do more with less around the country, any perception that this money isn't being spent wisely is something that should concern all of us, in particular, the Members of this subcommittee and the full committee as well.

So I look forward to hearing the testimony today and thank you for putting this hearing together.

Mr. EVANS. Thank you.

The chair invites each witness to remain present until the conclusion of this hearing. The chair notes witnesses may be recalled if desired by the subcommittee.

The chair has been previously informed witnesses representing GAO, with the exception of Larry Thompson, will remain present and be available to be recalled.

The chair also notes written questions may be submitted to the witnesses following this hearing. Those questions and the written responses provided to them will be made part of the record, without objection.

The subcommittee's first witness this morning is Larry Thompson, GAO's Assistant Comptroller General for Human Resources. He is accompanied by Paul Reynolds, Assistant Director of Human Resources Division, and Barry Bedrick, Associate General Counsel.

Larry, I want to welcome you before the committee. Your written statement will be included in its entirety and printed as part of the record, without objection, as will the written statement submitted by each witness here today.

You may proceed.

STATEMENT OF LAWRENCE H. THOMPSON, ASSISTANT COMPTROLLER GENERAL, HUMAN RESOURCES DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY PAUL REYNOLDS, ASSISTANT DIRECTOR, HUMAN RESOURCES DIVISION, AND BARRY R. BEDRICK, ASSOCIATE GENERAL COUNSEL

Mr. THOMPSON. Thank you, Mr. Chairman. You have introduced my two colleagues here, so I guess I can begin with a summary of my prepared statement.

We are pleased to be here today, as the subcommittee continues its examination of the Department of Veterans Affairs' use of contracts to purchase scarce medical specialists' services from medical schools.

Last August we reported to you that VA did not have adequate management controls to avoid contracting problems, such as purchasing unneeded services or paying unnecessarily high prices.

At your request, we have examined whether VA managers who are receiving incomes from medical schools are participating in VA contracting activities involving the schools and, if so, the conflict of interest implications for these managers.

The integrity of federal employees is essential to the American public's confidence in their government. Toward this end, presidents and the Congress have established federal ethics requirements which prohibit government employees who have dual employment from participating on the government's behalf in matters which they or their outside employers have financial interest.

In addition, VA's standards of conduct specify that employees should avoid any actions leading to or creating the appearance of conflicts of interest.

Mr. Chairman, I wish that I could report today that we found no ethics problems at the VA. But regrettably that is not the case.

VA's operating practices give rise to situations which, at a minimum, create the appearance of conflicts of interest and, at worst, place its senior managers at risk of criminal prosecution.

At nearly one third of VA's 158 medical centers, medical chiefs of staff receive part-time incomes, frequently exceeding $40,000 a year, from medical schools, generally for teaching or consulting ac-

tivities. We found at the VA centers we visited that these and other senior managers were participating on VA's behalf in the award or administration of contracts with the schools that employed them—activities prohibited by federal ethics rules.

Let me explain how potential conflict of interest situations may arise.

At one VA center a chief of staff was responsible for monitoring a medical school's activities under a contract valued at over $1 million a year, including notifying VA's contracting officer if performance was not satisfactory. The chief also had recruiting responsibilities, which could directly affect the amount of contract services purchased. This chief received more than $40,000 from the medical school while he was involved in these contract-related activities.

He reported to the VA that his duties as a medical school employee included nonclinical consultations and teaching at the school.

The Secretary of Veterans Affairs acknowledges that conflicts of interest situations may have occurred and agrees that VA has enforcement problems in some dual employment situations.

The Under Secretary for Health is taking steps, as we recommended, to strengthen enforcement, including revised procedures for VA's oversight of managers' requests for outside employment. We are encouraged by the Secretary's response and believe that VA is moving in the right direction.

We are, however, troubled by other positions articulated by the Secretary.

First, the Secretary told us that he believes that VA has clearly communicated the types of dual employment activities that managers may or may not engage in under federal ethics rules. He contended that employees disobeying rules does not necessarily mean that they do not know the rules. We disagree.

Our discussions with senior managers indicate that while they are aware of some fundamental ethics requirements, they are unaware of or unclear about how these requirements related to their own activities.

Second, the Secretary told us that he believes that VA should allow managers to supervise, on VA's behalf, contract activities of medical schools, when the managers have part-time employment at the schools. He contended that this is appropriate when focused on individual contract physicians' performance, as opposed to analyzing the school's performance under the contract. He argued that such clinical oversight would not have any affect on the center's contract.

As an example he said that if a service chief was dissatisfied with a contract physician's performance, the medical school would provide another physician without affecting contract terms or price.

Again we disagree. Although some problems may be dealt with this simply, more complicated situations could arise if the medical school does not want to replace a contract physician. In such situations, are VA service chiefs expected to challenge the medical schools which employ them or raise their concerns to VA chiefs of staff, who may also be employed by the schools?

In summary, Mr. Chairman, ethics laws and regulations are intended to prevent placing employees in situations where their loyalties are divided. That is, situations in which managers, in discharging their obligations to one employer, a medical school, may be acting against the interest of their other employer, a VA medical center.

We recognize that managers may believe, in the utmost good faith, that they will not be influenced by either relationship. Nonetheless, we think that it is difficult to guarantee that loyalty to one employer will not be an unconscious factor in making decisions for another employer. Currently, VA's senior managers face situations in which such divided loyalties inevitably and unavoidably arise.

This concludes my prepared statement and I will be glad to answer questions that you and the Members of the subcommittee may have.

[The prepared statement of Mr. Thompson appears on p. 34.]

Mr. EVANS. Thank you very much.

According to your report, fundamental changes in the VA's operating practices are needed to eliminate managers involved in prohibited activities. Could you elaborate on that at this point?

Mr. THOMPSON. Yes. I think that changes need to be made in the enforcement of VA's ethics policies.

In terms of the enforcement of policies, the policies are in place that these people should not be negotiating these contracts or be intimately involved in deciding whether you need a contract, how much you need, and so forth. Those policies were in place, but they were not being enforced. So that has to be changed.

Also policies having to do with reporting outside income were pretty fuzzy about what you reported and how much information you gave. And they were not being enforced either. So there is a combination of changes needed—both better enforcement and policy clarification. I think they are moving in that direction.

In addition, there is the issue of part-timers. And at the moment my understanding is part-time employees do not have to file forms explaining—getting permission for or reporting outside income from a medical school. We believe that policy needs to be changed and that part-time people also need to be covered by the reporting requirements.

Finally, there is the issue of people who are receiving income from a medical school and supervising other physicians that are being hired under these contracts. And we think that raises serious problems and needs to be carefully considered. We think the policies are inadequate in that area.

Mr. EVANS. Problems with at least the appearance of a conflict, if not a conflict?

Mr. THOMPSON. Well, at the very least, the appearance. We are not sure how you can supervise on a day-to-day basis and not be involved in administering the contract. We are not saying it can't be done. But it is not clear to us how you do that.

Mr. EVANS. The letter signed by the Secretary of Veterans Affairs states, in part, "We believe that supervision in the environment of the affiliation does not give rise to a conflict of interest."

Do you agree or disagree with this statement?

Mr. THOMPSON. That is a statement that we don't agree with.

Mr. EVANS. Could you please explain why?

Mr. THOMPSON. Well, as I said, the supervision of people involves inevitably evaluating how well they are doing.

At the end of the year you have to decide whether this is a contract that you want to renew and whether performance was satisfactory. Who are you going to talk to? You are going to talk to the person that supervised the people on a day-to-day basis.

If you—we have never seen this—but if you had some independent mechanism for evaluating contract performance that didn't involve the supervisor—and I am not saying I know how to do this, but if you had some mechanism like that and you had a mechanism for verifying that the people were actually working the hours that were being paid for, and all kinds of things that normally supervisors do in their day-to-day supervision, if you had alternative mechanisms, then maybe it is possible for supervision not to be a conflict of interest.

But it seems to me that there is a real burden here to demonstrate that you can supervise under a contract and not be involved in a conflict of interest situation.

Mr. EVANS. Let me yield to the gentleman from New York.

Mr. QUINN. Thank you, Mr. Chairman.

In some of your testimony you mentioned, Mr. Thompson, that this kind of activity has been written about before. I am a freshman member here and new to the subcommittee. Some of the background that I have looked at says as far back as 1981 there may have been some mention of possible conflict here. That is a long time. And indeed, the chairman mentioned he has been looking at it for six years or so now, trying to bring forward some solutions.

I guess I am at a little bit of a loss here and will learn in the coming weeks and months. But if this has been discussed for so long, could you enlighten me on why we haven't come up with some kind of solution?

The Secretary was here to testify before the full committee some time ago, Mr. Chairman when we talked about harassment and some other issues, and he appeared to me to be interested and willing to make some changes in-house to address our concerns.

Why has it taken so long to resolve this issue and why is the chairman still talking about this at least six years later.

Mr. THOMPSON. A very good question. I am afraid that there has been at least in the past—a pattern of problems which have been highlighted at the VA which the senior management Central Office has agreed are problems that need to be dealt with. Perhaps directives have been issued to deal with the problems. However, when you go back and follow up at the individual medical centers to see what has happened, you discover that nothing or very little has changed.

There is a history then of repeatedly finding these problems. They get dealt with eventually, frequently because of the efforts of this subcommittee in continuing to hold hearings and highlighting them, to the point that after the second or third time they do get dealt with.

But there has been in the past at least a lack of follow-through. There is a management breakdown someplace.

Mr. QUINN. That is very polite, a lack of follow through, it seems to me.

Thank you.

I will do my best, Mr. Chairman, to see that I learn some history on this as well.

Mr. EVANS. Thank you.

Is the problem of clinical supervision and the appearance of conflict of interest insolvable or is the use of waivers a possible solution to that problem?

Mr. THOMPSON. I wouldn't say it is insoluble. I would say there is a challenge in trying to deal with it. And I can't today tell you a cookbook answer that would solve it.

I think you should ask the government ethics people. My understanding is they issued some new regulations fairly recently which may allow waivers in situations which previously weren't allowed—in situations where you had one person who inevitably had to do something in order to make a process work effectively and that person had a conflict and you couldn't figure out a good way to get around it.

I would say that with the new pay authority, the issue here is whether VA is able to hire chiefs of services and chiefs of staff with the amount of money the federal government now allows it to pay, who don't have to work part-time for the same medical school. That is the issue here, that if we can hire—using that authority—if we can hire these service chiefs and the chiefs of staff, pay them enough that they don't have to get a part-time job someplace at the medical school, then we can have these contracts and they can be supervised and we can get around the conflict of interest problems.

The problem arises because these managers are working part-time for the university or working under the contract itself sometimes.

Mr. EVANS. Your report noted that VA's ethics officer has issued a number of opinions. Are any of those opinions at odds with the VA's current policy, that policy essentially being that a VA physician can simultaneously be responsible for the quality of care provided by contract physicians and be employed by the contractor and not be at risk of either violating federal standards of conduct or creating the appearance of a conflict of interest?

Mr. THOMPSON. Yes. Our reading of the history of this is that the position taken by the VA ethics officers up until 1987 was similar to the position we are taking. It was saying that supervision on a day- to-day basis raised serious concerns.

The position which they now adopt, which is to say that it is all right to supervise on a day-to-day basis, is one which they adopted only in the last five years or so.

So prior to that time, I believe they had a different position and one which we are more comfortable with.

Mr. EVANS. Requests for outside employment submitted by VA chiefs of staff have been reviewed and approved by the Under Secretary for Health, while the same kind of outside employment requests submitted by VA service chiefs have been reviewed and approved by medical center directors.

Should the outside employment requests and approval process be the same for all VA employees?

Mr. THOMPSON. I would think so. To have an effective internal control, you have to have somebody in the position of authority to understand exactly what the picture is throughout the medical center. And if you divide it up and have one person reviewed one place and another person reviewed someplace else, you don't know whether those two people talk to each other.

Mr. EVANS. VA reports an active ethics training program with more than 6,000 formal ethics training sessions since 1989. However, many VA senior managers have reported to you that they were either unaware of or unclear about the requirements affecting their own activities.

How do you explain this apparent contradiction? What action should the VA take to better inform its employees about ethics requirements?

Mr. THOMPSON. I have to speculate a little bit here. But my understanding is many of these sessions are basically one hour sessions. And in a one hour session that discusses government ethics, that can be a fairly abstract discussion of ethics. It may be that you could easily spend an hour and never get into the issue of scarce medical specialist contracts and supervision, and that sort of thing.

So you could just find that there have been a lot of hours of training but it has been basically rather abstract and general. It may be effective for other purposes but not for this purpose.

We didn't find until very recently any place where, if you were a service chief and you were worried about this, where you could find any guidance as to what you should and shouldn't do.

Just recently the manuals have been revised. And now if you are smart enough to know which manual to pick and where to look, you may find the guidance. But you don't find an active outreach there. I mean, nobody is sending a memo to all service chiefs throughout the VA saying, alert, here is a situation that needs to be considered carefully.

They do have a videotape that I think they shared with us yesterday—the staff here may have seen it, too—of a conference that they did. And that seemed to be pretty good. I don't know how many people have seen the videotape. And it would probably be better if it were translated into written guidance.

So I think we may find that—I have to speculate but my speculation, and somewhat informed speculation, is it is probably fairly general, not specific enough, and the guidance was lacking or not easily available to the people who needed it.

I guess I kind of meshed together the answer to both your questions there.

Mr. EVANS. That is fine. My final question relates to a concern I undestand the VA has, from what I have read in their testimony, that most of the changes that GAO is suggesting would jeopardize the affiliation process and heritage and tradition with the VA.

How would you respond to that notion?

Mr. THOMPSON. Well, I don't think it is quite that serious a situation here. First of all, if you just count the number of changes we are recommending, I am pleased to say that they have agreed with about two thirds of them.

We state further that the outside employment activities of part-timers need to be monitored more systematically. And there needs

to be a better enforcement of the current standards. But they agree with that. I don't see how monitoring outside activities of part-timers is going to upset a valued relationship with the medical school.

So, we are down to the supervision issue and that can be worked through. And as I say, I think the question, the real question we need to start with is, do we have to hire doctors to be chiefs of staff or chiefs of the medical services who have part-time jobs with the medical center; can we now pay enough that we can expect these physicians—we are only talking about a dozen in a given hospital—to be full-time employees of the VA, or at least not to have outside employment from the medical school.

I don't think that is asking so much that it is going to jeopardize the affiliation relationship with the medical school.

Mr. EVANS. Thank you.

The gentleman from New York.

Mr. QUINN. Thank you, Mr. Chairman. Unfortunately, I have to leave for another meeting. I expect to be back, so I will leave my things camped out here. But I would like to ask permission, if I may, to insert some questions that we have for the record, and, Mr. Thompson, ask that we get some answers over the next couple of weeks.

In particular, I would like to explore this whole idea, I guess, that I have read in here about competing a little bit, that kind of thing. If that is okay, I would like to leave those questions.

Mr. EVANS. I will also be submitting some written questions which will be made part of the record.

Mr. QUINN. Thank you. I appreciate that.

Thank you, gentlemen, very much.

Mr. EVANS. Thank you very much. We appreciate your work and your testimony here today.

Mr. EVANS. Our next witness is Steve Trodden, VA's Inspector General. Accompanying him today are Mike Sullivan, Assistant Inspector General, Office of Audit, and Dave Sumrall, Regional Manager for the IG's Seattle Office.

We want to welcome you back, Steve. Once you get situated, you may proceed as you wish. If you want to summarize, your complete statement will be made part of the record.

STATEMENT OF STEPHEN A. TRODDEN, INSPECTOR GENERAL, DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY MICHAEL G. SULLIVAN, ASSISTANT INSPECTOR GENERAL, OFFICE OF AUDIT, AND PRENTIS DAVID SUMRALL, REGIONAL MANAGER, SEATTLE OFFICE OF INSPECTOR GENERAL

Mr. TRODDEN. Thank you, Mr. Chairman. It is good to be back before you again today. This is a follow-up, as you well know, to hearings that you conducted late last summer.

In the interest of the committee's time, I am going to give you a very brief digest of my prepared statement. I will skip the origins or our audit, the background material that is in my statement, and our audit methodology, and leave that open for questions should the committee desire.

Let me turn right to the results

As you are aware, Mr. Chairman, when we last spoke we told you that we had perceived in early 1992 a continuation of some problems that we had observed in a 1987 audit report.

When we last spoke, we gave you some preliminary results from that ongoing audit that we had initiated as a result of our early concerns. And we are here today to talk to you about the results of a completed audit that involves some 100 contracts that were all in effect as of 30 September 1992. So our data is fairly current.

In a nutshell, the results of our audit are negative in the sense that they show a very high degree of noncompliance with rules and regulations concerning scarce medical specialists contracts.

To be specific, in 90 out of the 100 contracts that we looked at, we concluded that there was either nonexistent or inadequate cost and pricing data to support those contracts. And in the questions and answers, I would like to talk some more about cost and pricing data, because it is a crucial element to a determination of price reasonableness in a negotiated sole source contract.

In addition, in 91 of the 100 contracts there was noncompliance with major procurement requirements other than cost and pricing data. I am talking about requirements to demonstrate that VA has made an adequate attempt to recruit people, that VA has done a workload analysis, that VA covered conflict of interest concerns, that we have justified the noncompetitive contract, that there was an adequate pre-award audit of the prices and that VA performance monitoring measures in place. Of those six additional requirements, one or more was missing in 91 of the 100 contracts we looked at.

As I said, cost and pricing data is crucial. It is not unique to scarce medical specialists contracts. It is a technique that is used throughout—mandated throughout the federal government whenever you are dealing with a vendor in a sole source environment and you don't have other pressures on the price proposed that tend to support its reasonableness.

By pressures I mean, for example, competitive pressures. And when you don't have those marketplace pressures available to you, the procurement regs mandate that you ask the vendor for the breakdown of his price proposal. You want to know his costs. You want to know his overhead. You want to know his materials. You want to know his labor costs. You want to know his profit. Things of that nature are what I call cost and pricing data and it is crucial to determining price reasonableness in a sole source contract.

On 56 of the 90 contracts there was no cost and pricing data at all. And in 34 of the 90 there was very inadequate cost and pricing data. And we can get further into what we mean by inadequate in the Questions and Answers.

We found a couple of primary themes as to the causes of these things. First of all, there was a fair amount of ignorance about cost and pricing data. This is of concern to me because with that degree of noncompliance in scarce medical specialists contracts, it gives me concern about how well we are doing about local purchases generally other than in just scarce medical specialists. So a fair degree of ignorance of cost and pricing data and the need for it and how to use it, and what it is supposed to be and what it looks like comprises the first cause.

We also found a tendency of either the chief of staff or the service chief to sort of overwhelm the contracting officer, who is the agent for the government by law when this contract is signed. But nonetheless a fair amount of command pressure, if you will, is placed on contracting officers to move the mail and sign the contract, and so forth.

As a result of our audit, we made four specific recommendations. We did think that additional guidance needs to go out, guidance having to do with how to obtain and how to use cost and pricing data. We think there needs to be guidance on what constitutes allowable costs versus unallowable costs in these kinds of contracts.

Because of a degree of unfamiliarity and downright ignorance of cost and pricing data, we thought a uniform format for what it is and what it looks like should be mandated. We felt that there should be procedures put in place for monitoring compliance. And lastly, we thought a one time review should be conducted of all open scarce medical specialists contracts and attempts to recover excessive charges be made irrespective of whether or not we have a contractual right to demand recovery. Even if we have simply a moral right to request it of the universities, we thought an attempt should be made.

Turning now to the questions of conflict of interest, which you were just discussing with the GAO.

We found what will appear to be, I will have to say, problematic at the moment because our review was done by my auditors. As you are well aware, conflict of interest statutes have criminal sanctions. So further in depth work needs to be done by people trained in criminal matters. But at least on the surface we found 29 contracts out of the 100 awarded by 19 different hospitals and involving 23 employees, 12 chiefs of staff and 11 service chiefs, that appear to us to involve potential for conflict of interest.

In the interest of clarity of this hearing, Mr. Chairman, I talk about a three-pronged element to this question. The three prongs are namely this.

The first one is participation by people in dual employment modes in the determination of need, the negotiation and award of the contract itself. And I think all parties would agree that that is a conflict of interest situation.

The second prong would be in what I call the quantitative determination or administration of the contract as to whether or not VA in fact got the 100 hours or the 100 staff days, or whatever it is that VA bought, a measurable, quantitative thing. I think all parties would agree that that is also a conflict of interest situation.

The third prong that I think should bear quite a bit of scrutiny in this hearing is what I will call the qualitative administration of the contract, or what you were just talking about with the GAO with regard to quality of care supervision. I think that one becomes a bit more problematic than the first two and I will save some remarks in our Questions and Answers for that particular subject.

Our recommendations flowing from the conflict of interest observations were that these contracts should be negotiated, awarded and the quantitative aspects of whether we got the services that we contracted for should be monitored by contracting officer personnel and not by medical officer personnel.

We also recommended that the directors of the hospitals certify compliance for all scarce medical specialists contracts with the conflict of interest regulations and statutes.

Regarding another segment of my statement, Mr. Chairman, I think there are other activities beyond the scope of your instant hearing that I wanted the committee to be aware of, other activities that are at risk, in my opinion at least, because they have the flavor of some of the issues that we looked at here.

Two of them involve ongoing audits of my shop that are in the preliminary phase. I don't have any conclusions to give you at the moment, other than anecdotal incidents.

One would be administration of resident salary disbursement and the second would be certification of time and attendance for dual employed physicians. At least anecdotally, we see some problems in those two areas with regard to our ongoing audits. And upon their completion, I certainly will advise the committee of our conclusions and whether or not those anecdotes are more widespread than I now know.

The third area is simply a planned audit. We haven't got into it yet. But it is a related subject to scarce medical specialists in the sense of negotiation and administration of sharing agreements.

I would like to close this summary of my statement, Mr. Chairman, by making one observation. And I don't do this lightly and I certainly don't do it to minimize the fact that there is a problem in this area. When you talk about 90 out of 100 contracts or 91 out of 100 contracts, it is clear we have a problem in this area.

However, in that third prong, if you will, of my description, where we get into quality of care concerns, where we get into the qualitative measure of contract administration, I have reflected long and hard about this.

I came from a Defense environment in most of my career. I think clearly if a Defense employee had a moonlight employment with Martin-Marietta and was doing some of these, even the qualitative things, we would conclude it was a conflict, at least an apparent conflict of interest and therefore needed to be dealt with.

I think if you read the conflict of interest regs in isolation, if you read the conflict of interest statutes in isolation, you come to a certain conclusion that this is a problem.

This is a little dangerous, Mr. Chairman. I am a long time out of law school, but the thing that occurs to me here is a rule of statutory construction that says when you have two statutes, you try to read them together so as not to conclude that they are in conflict. And what I have in mind here is that you do have a statute or statutes that govern conflict of interest, but you also have a congressional statute that encourages the VA to join into affiliation agreements.

As I read those two together, when you get down to the question of the chief of a service, I have no question that he shouldn't be involved in the first two prongs of my three-pronged analogy. But when you get down to that third prong and you are talking about a chief of a service passing judgment on whether or not the quality of services being provided to him under the contract are adequate or inadequate, I have tended to conclude that that problematic en-

vironment is almost a given when the two statutes are read together.

And I just urge the chairman and the committee to think about that a little bit, also to think about the reality that the contract situation isn't necessarily all that unique from the employment situation.

By that I have in mind that if you are the chief of radiology at the VA and you hold a part-time employment with a university, you may well have on your staff a university faculty member who is your subordinate in the VA and to whom you are subordinate when you work together over in the university.

So if the problem is of concern in the contract situation, and I agree it should be, I submit that it might also be of concern in the employment consideration. And I am not sure that that is avoidable, given the otherwise attractive benefits of affiliations to the VA, which I have not heard people in a serious way contest.

So I offer those thoughts for the chairman's consideration. I close now and both Mr. Sullivan, my Director for Audit, and Mr. Sumrall, who is out of my Seattle office and did our audit in this area, are open to your questions.

[The prepared statement of Mr. Trodden appears on p. 42.]

Mr. EVANS. Thank you very much, Steve. We appreciate your testimony and commend you for the recent initiative of your office to thoroughly review VA procurement.

Your office has reported massive VA noncompliance with scarce medical specialty contracts rules and regulations. Have individual employees of the VA been held accountable for these actions and for this disastrous record? What, if any, disciplinary action should be imposed?

Mr. TRODDEN. Referring back to my numbers, Mr. Chairman, we found 23 individuals that looked to us like they were in situations, particularly those first two prongs. These were either as a result of our on-site visits or our use of some questionnaire techniques, like do you or do you not have a part-time employment with a university; if yes, tell us how much. And they responded, yes, $10,000, $40,000, whatever. Then we have a question that says, do you participate in the negotiation and award of the scarce medical specialists contract with the university. The answer is yes.

So we have some data that is pretty hard from an audit standpoint that indicates 23 people are in situations, not in the third that I talked about but in those first two prongs, negotiation and award of a contract and in the quantitative judgment as to whether we have gotten the services we paid for. That seemed to be a problem.

Now in answer to your question, I have asked my auditors to turn the files they have of all 23 individuals over to the investigative side of the house, because when you get into criminal matters you need to get into intent, and you need to work with the ethics officer of the VA. And we will pursue all 23 of those cases. They have not been worked to the degree they need to be worked as of yet.

Mr. EVANS. After the corrective actions that you recommend are implemented, will it then be possible to hold these VA employees, individuals, accountable for failing to comply with scarce medical

specialty contract rules and regulations, noncompliance basically with the cost/pricing requirements?

Mr. TRODDEN. Yes, sir. Following the determination of each individual case, as need be, the answer to your question would be yes, we will hold the proper people accountable.

As you well know, Mr. Chairman, I simply make recommendations to management on what needs to be done. They receive those recommendations. They afford the employee due process. And out of all of that, we will be calling for accountability, yes, sir.

Mr. EVANS. After these corrective actions are implemented, which VA officials should identify failures to comply with these contracting rules and regulations?

Mr. TRODDEN. I would urge the committee, in light of the preceding testimony with regard to who reports what they do, it would seem to me that you would have a tiered system of review.

For example, on the question of part-time employment, should the committee and the Congress decide that reporting of part-time employment is in the national interest, I would urge a distinction, for example, between service chiefs and chiefs of staff on the one hand versus working physicians on the other.

It seems to me if you mandated that for all physicians, you are talking a rather enormous workload that ought to come to some centralized point. Perhaps the working physician question could be handled at the hospital level and the part-time employment of service chiefs and chiefs of staff could be handled at a more centralized level.

Mr. EVANS. Do you agree with the GAO recommendation that part-time managers, like full-time managers, should be required to request and receive approval for outside employment?

Mr. TRODDEN. I sympathize with that recommendation, yes, sir.

Mr. EVANS. And should full-time VA employees who accept outside employment before requesting and receiving required VA approval for such employment be disciplined?

Mr. TRODDEN. I am sorry, Mr. Chairman. I lost the thread of that. Would you repeat it?

Mr. EVANS. Should those full-time VA employees who accept outside medical employment without requesting and receiving VA approval for that employment, as required, be disciplined?

Mr. TRODDEN. I would think whenever you get into the question of discipline, you do need to look at the individual facts, the degree of knowledge, whether it is the first offense or the fifth offense, etc. But as a general principle, yes, I would think appropriate remedial action should be taken.

It could be fairly mild if it is an ignorant first time offense. If it is a clear, deliberative violation of the requirements, I would think the discipline should be more severe.

Mr. EVANS. Would the effective enforcement of ethics requirements and federal standards of conduct jeopardize the VA affiliations with these medical schools?

Mr. TRODDEN. I don't see any problems, nor do I believe that the CMD or his legal advisors see any particular disagreement on the first two elements that we have in force.

If we keep dual employed people out of the negotiation of contracts and if we keep them out of the business of determining

whether we got the services we paid for, I don't think there is any disagreement about that.

I think the only problematic area gets into can you effectively take a chief of service out of the question of whether or not the services he is being supplied are qualitatively sound. I don't believe you can and maintain the affiliation arrangement that the VA has with the universities.

I would offer also, Mr. Chairman, that I am concerned in that area but there are other checks and balances. There are quality assurance processes available to the VA.

There are nurses and surgeons who care about the quality of the anesthesiology service that they get in the course of their procedures. I don't believe they are going to stand silent and witness poor care being provided by those anesthesiologists just because the chief of anesthesiology may have a relationship with the university.

Moreover, it is my understanding that these physicians who are being supplied under the contracts, and the university that is sending them bear the malpractice liabilities. So I don't think that is a light measure either and I think it is a safeguard.

The committee will have to determine whether these checks and balances in total are adequate. But it is there and I think it is a corresponding pressure, a countervailing pressure.

Mr. EVANS. Is there anything in Title 38 that exempts VA employees from these federal ethics standards?

Mr. TRODDEN. Not that I am aware, Mr. Chairman.

Mr. EVANS. Do affiliation agreements provide an exemption from federal ethics standards?

Mr. TRODDEN. Not that I am aware. I think it is a question of reading two statutes together and trying to come up with a conclusion that they are workable together.

Mr. EVANS. Does minority counsel have any questions?

Thank you very much. Our committee looks forward to receiving the results of your general review of the VA affiliation history, tradition and practice, and appreciates your testimony before us today. Thank you.

Our next witness is Dr. Jim Holsinger, VA's Under Secretary for Health. Jim is accompanied by several VA officials this morning and we will ask Jim to introduce them once he gets seated. He may proceed once he is ready.

STATEMENT OF JAMES W. HOLSINGER, JR., UNDER SECRETARY FOR HEALTH, DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY AUDLEY HENDRICKS, ASSISTANT GENERAL COUNSEL AND CHIEF ETHICS OFFICER; ARTHUR S. HAMERSCHLAG, DIRECTOR, MEDICAL SHARING OFFICE, VETERANS HEALTH ADMINISTRATION; AND ROBERT BEETON, DIRECTOR, ACQUISITION POLICY AND REVIEW SERVICE, OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT

Dr. HOLSINGER. Good morning, Mr. Chairman. It is a pleasure to be with you.

I would like to introduce the people that are with me. I have Mr. Audley Hendricks, who is the Assistant General Counsel and the

VA's Ethics Officer; Mr. Art Hamerschlag, who is the Director of the Medical Sharing Officer; and Mr. Bob Beeton, who is the Director of Acquisition Policy and Review Service.

Mr. Chairman, the focus of today's hearing is on the application of ethics and conflict of interest laws to the scarce medical specialist services contracting process.

During 1992 and early 1993, audit work by the VA Inspector General and the General Accounting Office identified numerous problems related to our scarce medical specialist contracting program. And your August, 1992, hearing focused attention on these problems.

Since that time, we have made significant—I repeat, significant—progress in correcting deficiencies.

On March 11, 1993, we published a new regulation that includes expanded requirements for the justification of contracts, clarification of the role of the contracting officer in negotiations, clear guidance on avoiding conflict of interest, and requirements for Central Office review of cost or pricing analysis and pre-award audits.

It also clearly reiterates the legal restrictions on payment for on-call or standby services, the limitations on research, education or other services in contracts, the expanded requirements for submission of contracts for VA Central Office review, and emphasis on contract performance monitoring.

We have provided extensive training for contracting personnel on all aspects of scarce medical contracting.

Since July, 1992, we have conducted numerous national conference calls and communicated in other ways with VHA management, emphasizing requirements for contracting with affiliated medical schools.

On March 19, 1993, we conducted a national video conference on scarce medical specialist services contracting, with special emphasis on conflict of interest issues for our medical center directors, chiefs of staff, clinical service chiefs and acquisition and materiel management chiefs.

I participated in this national video conference, as did Mr. Hamerschlag, Mr. Beeton and a representative from Mr. Hendricks' office.

We have provided previously a copy of the videotape of this conference to your committee staff.

The Medical Sharing Office and attorneys from the Office of General Counsel have participated in several Office of Acquisition and Materiel Management national teleconferences and symposia dealing with this special type of contracting.

I also appointed a task force to develop staffing and workload guidelines for anesthesiologist and radiologist contracts. These guidelines were published and distributed to our field managers on March 30, 1993.

In addition to the above actions, we issued a VHA policy to require both District Counsel and local personnel officer review of all requests for approval of employment with entities doing or seeking to do business with the VA. Also, all requests made by chiefs of staff will be reviewed in the same manner.

Mr. Chairman, you will be pleased to know that the total cost of this program declined to $52.7 million in 1992 and is anticipated to continue a downward trend.

As discussed during the August 1992 hearing, the primary reason for this decline is the increased rates of pay for physicians that were authorized by Public Law 102-40 and implemented during fiscal year 1992.

To ensure that corrective actions are, in fact, implemented in the near future, we will initiate a one time comprehensive review of all scarce medical specialist services contracts. And I have also asked the Inspector General to do a follow-up audit to determine our compliance with our new regulations late this fiscal year or early in the new fiscal year, in early 1994.

We have undertaken all these initiatives to ensure that needed scarce medical specialist services are appropriately procured and that applicable contracting and conflict of interest rules are followed. I believe these actions will remedy the problems cited in the GAO and IG reports.

Mr. Chairman, my formal statement discusses issues raised by the GAO about VA's ethics program. Mr. Audley Hendricks and I are in agreement that VA can meet appropriate ethical standards in its business relationships with affiliated universities and other entities without compromising the viability of those affiliation relationships, which are critical to our ability to provide the highest quality medical care to our nation's veterans.

I will be pleased to respond to any questions which you might have, Mr. Chairman, or other committee members. And I would request that my full statement be printed in the record. Thank you.

Mr. EVANS. Without objection, so ordered.

[The prepared statement of Dr. Holsinger appears on p. 47.]

Mr. EVANS. First of all, let me say I think the VA has made some progress in this area and I want to compliment you for doing that. But I think problems remain which I would like to explore in my questions.

In commenting on GAO's draft report, the Secretary wrote, "I agree with GAO that conflict of interest situations may have occurred at some VA medical centers in the past."

How many VA employees have been disciplined and what disciplinary actions were taken with regard to these violations?

Dr. HOLSINGER. At this point in time, based upon the IG reports, no disciplinary actions have been taken because, as the Inspector General reported to you in his testimony, he has not completed the review of the 23 individuals' specific situations. So until he does that and provides us with that report, we will not be taking action.

Mr. EVANS. So basically the Secretary is relying on the GAO and IG testimony that there have been violations? Is that the basis of his agreement that there have been violations?

Dr. HOLSINGER. Yes, that is correct.

Mr. EVANS. All employees are charged with the responsibility for knowing and obeying the applicable ethics restrictions, according to your testimony, Dr. Holsinger. What explanation can you offer for the lack of personal accountability and disciplinary actions to date?

Dr. HOLSINGER. Well, in times past, Mr. Chairman, we have actually had individuals reported through the process to the Ethics

Office and on to the Justice Department for possible prosecution for criminal conflict of interest violations. The Justice Department has so far in every instance refused to accept those cases. And I honestly cannot tell you what disciplinary action, if any, was taken during those instances. I don't believe any have occurred during the time in which I have been the Chief Medical Director of the VA.

Mr. EVANS. GAO recommended that the Secretary consult with the Office of Government Ethics and VA's Ethics Officer be directed to revise VA's policies governing the types of dual employment activities that medical center managers may engage in under federal ethics laws and regulations.

When does the Secretary plan to consult with the OGE, as recommended by GAO?

Dr. HOLSINGER. First of all, Mr. Chairman, we consult with OGE on a continuing basis. And we also are due, if I recall correctly, this year for our agency review.

Perhaps Mr. Hendricks could add some information to that answer.

Mr. HENDRICKS. I would be happy to. We have consulted with OGE with regard to the issues raised by GAO.

With regard to consulting on changing the rules, getting supplemental regulations, which I believe is the context in which GAO made its recommendation, the conduct regs, which haven't received much attention in the GAO report, provide that when an agency determines there is a need for supplemental regulations, then it will consult with OGE.

We have looked at the GAO report and the IG report with a view to whether we need supplemental regs. We have concluded we do not.

We agree there are problems out there of lack of enforcement of the rules. We take a position similar to that which Mr. Trodden took with regard to what we characterize as the practice of medicine separate from the administration of the contract. And we don't believe that is a conflict of interest under the rules. Therefore, we don't think there is any need for supplemental regulations and we believe the current regulations are more than adequate.

But, of course, we are willing to discuss that with anybody any time.

Mr. EVANS. Do you agree with GAO's recommendation that part-time VA managers, like full-time VA managers, should be required to request and receive approval for outside employment?

Dr. HOLSINGER. No, I totally disagree with that stance by the GAO. I think that would single out physicians within the Veterans Health Administration for separate and disparate treatment, as compared to that of any other part-time career employee within the United States Government, for which there is no such requirement.

I think that to do so would result in the loss of a significant number, perhaps a majority of our part-time physicians, who in many respects, when they come to us one-eighth time or quarter time to take care of certain types of procedures, are doing us a favor, not the other way around. And to require them to have our approval for what they do for the bulk of their work would simply,

I think, boggle the mind of most of the part-time physicians in our service.

Half of our physicians that we employ are part-time.

Mr. EVANS. Wouldn't this help insulate them from either apparent conflicts of interest or even potential criminal conflict of interest?

Dr. HOLSINGER. I think, Mr. Chairman, the vast bulk of our part-time physicians, for example, have no such difficulty. They are staff physicians who come to us one quarter time to take care of, for example, the ophthalmology services at a small hospital where there is no need for full-time physicians. We don't have that much workload. That is one of the major reasons we use part-time services.

I think when it comes to the issue of dealing with part-time service chiefs, we need to remember there are no part-time chiefs of staff in our system. The last two that were grandfathered at the time that the law was changed requiring them to be full-time a decade ago, one has retired and the other has converted to full-time. So we have no part-time chiefs of staff. We only have part-time service chiefs at the most senior level.

In that case, I think that we would want to know whether they have any conflict of interest activities and in point of fact would not have a major problem with discussing with them what they are doing with their other part-time.

But the vast bulk of our physicians, over 7,000 part-time physicians, are staff physicians who are not in any way, shape or form involved in any way with the oversight of the practice of contracting.

Mr. EVANS. I am going to yield to Minority Counsel at this point.

Ms. DONOHUE. Thank you, Mr. Chairman.

Dr. Holsinger, the Inspector General concluded that the most significant problem was that VA medical centers usually did not base contract prices on accurate and complete cost or pricing data, and as a result sometimes paid higher prices than necessary.

What is being done to ensure that the taxpayers' money is well spent?

Dr. HOLSINGER. I appreciate you asking that question. We have placed into our system an absolute requirement that cost and pricing data must be obtained by the contracting officer, and that must be provided with the proposed contract for review in Central Office by Mr. Hamerschlag's office, by Mr. Beeton's office, and by Mr. Hendricks' office.

So that there is no way under our current regulation that you can have a contract entered into without cost and pricing data being obtained, and on top of that, being reviewed in Central Office by the appropriate officials here.

Ms. DONOHUE. Dr. Holsinger, has there been any thought given to requiring competition for scarce medical specialist services in a similar manner to the competition required for many other federal contracts? And if not, why not?

Dr. HOLSINGER. First of all, half of all of our contracts are competed for scarce medical specialists. I think there has been a lack of understanding about the fact that we compete—my last number I think was 55 percent of all these contracts are competed.

Forty-five percent, we have legal authority to enter into scarce medical specialist contracts on a negotiated basis, on a sole source basis, only with our affiliated medical schools. That is the only place that we can do that.

The situation as it occurs now is that the number of scarce medical specialist contracts peaked in 1990 and 1991, being almost exactly the same number, and has dropped significantly in 1992. The dollar figure for the dollars expended under this program dropped from 85 or so million dollars in 1991 to only 53 million dollars in 1992.

It is clear that our physician special pay legislation that was passed by Congress a little over two years ago has taken effect, that we are able to hire a far greater number of these individuals. We have had reductions in vacancies by 15, 18, 20 percent in anesthesiology and radiology, an increase in full-time staff physicians in those arenas by about the same number. We are able to hire to fill vacancies that we had long since thought we would not ever be able to fill.

But at the same time, we need to remember that based upon the Washington Post recently reported average physician salary in America, there is no one in the Veterans Health Administration that makes the average salary for physicians in America.

In fact, the average salary in the Veterans Health Administration for physicians is about $115,000 a year. For chiefs of staff, it cannot be higher than $148,000 and in the case of service chiefs is significantly less, somewhere approximately halfway between that of staff physicians and chiefs of staff.

So that although it has helped us remarkably and we do have in the area of radiology and anesthesiology some physicians that are now making in the range of $162,000 a year, we still are not totally at a place where we are going to ever be able to offset the requirements for the scarce medical specialist contracts. We think it will continue to go down. It will never reach zero. It wasn't zero when it started going up about five years ago.

Ms. DONOHUE. How would you react to a requirement that all contracts be competed?

Dr. HOLSINGER. Well, if we competed the contracts that we have with our medical schools, for example, we would lose our residency programs in anesthesiology and in radiology in those instances, unless the school is the low bidder, because the requirement to teach medical students and to train residents within our program is that the individual must be a faculty member at the medical school.

If we bid the contract and it goes to a local practice group, for example, without the faculty appointments, then we will lose our residents and we will not be able to train students.

The outcome of that, particularly in radiology, is devastating to us, because not only do the radiologists train the radiology residents, but they are also involved with teaching the principles of radiologic interpretation of the routine types of films to our medical residents, our surgical residents, neurology residents, and so on. And there would be no one available on-site to be able to teach them in those arenas.

So it has the potential for having a major devastating impact upon our training mission, which is one of the four statutorily determined missions of the Veterans Health Administration: the care of veterans, the training of health care professionals, the conduct of research, and providing back-up to DOD in time of national emergency.

We trained last year over 100,000 health care professionals within the Veterans Health Administration. We are the major training base for health care professionals in America.

Ms. DONOHUE. Mr. Hendricks, would you outline briefly what exactly is the function and authority of the ethics officer for VA facilities?

Mr. HENDRICKS. Yes. The function is to be the interpreter of the rules of conduct, the ethical standards for the government. It is a direct delegation from the Secretary to the Designated Agency Ethics Official.

Primary functions are counseling and education. We also review the financial disclosure statements filed by senior employees, the public disclosure statements, store them. And under the new Ethics in Government law, we have received responsibility for the confidential financial statements filed at all the facilities by certain key officials who have fiscal responsibility, primarily.

Our position is similar to that which Mr. Trodden described with regard to the advice and recommendations that he described he has. We make recommendations. It is basically an attorney-client relationship with regard to the counseling.

We get requests for opinions, and we get hundreds of them, both requests for written advice and telephone advice as to whether certain conduct violates some standard of conduct in the regulations or some law. We write opinions based on specific fact situations back to the requesting officials. And where appropriate, we will send it to the organizational unit where it has application.

All of those opinions go to our database. All of them that are of any significance go into our database that is accessible by all of our District Counsel and some other people.

Where there is a violation of a reg, we will consult with the organization involved, VHA most usually, personnel with IG, in determining what is appropriate remedial action.

We have not have any effective enforcement power and don't have any. And even if it were there, we would probably not be able to exercise it over the objections of a department or office head.

That is primarily our responsibility.

Education. Under the new ethics law, we were required to give a minimum of an hour education to everybody, every employee in the agency. That is 200 and what, 35, 50 thousand people. Fortunately, they let us do that in writing. That is, I am sure, what the GAO must have been referring to when they talked about our hour sessions. That is the only place where we have hour sessions, unless somebody asks for a one-on-one session where we will sit down with them and address a specific situation.

In recent years, when resources have allowed, we have done traveling shows. A year or so ago we did three major ethics sessions covering the gamut of ethics regulations, designed for top management.

In VHA, several of the regional directors directed their hospital directors and chiefs of staff to attend. It is difficult to get them to attend those sessions, but they did those three sessions.

Within the year, last year, two people on my staff have spent a significant amount of their time doing training sessions around the country at the request of the organizations within VHA.

The chairman mentioned the number of the training sessions and numbers of employees. That is probably pretty close. We do a lot of training. That is just from Central Office.

In addition, we have 54 District Counsel who are involved in the everyday operation of their facilities. As I talk to these District Counsel, both when they are here or I am in their office, they tell me their activities in the ethics area have burgeoned with the enactment of the new law and the issuance of the new regs.

The video conference Dr. Holsinger and his staff did has also generated a lot of questions. That is normally the way we do our training.

Ms. DONOHUE. Thank you, Mr. Chairman.

Mr. EVANS. Mr. Hendricks, despite your efforts to inform people, the IG speaks of ignorance on the part of a lot of VA employees as far as these regulations are concerned. Are there other things you can be doing in the future to deal with that problem?

Mr. HENDRICKS. I suppose we could devote more resources to our training effort. There is a limit to what we can do for this. We have a lot of responsibilities in General Counsel's Office. We keep getting cuts in staff.

We are responding to every request for training that we get, without exception. We have initiated a number of conferences.

The ignorance, one of the reasons for that, I believe, is there is quite a turnover of the physicians and a lot of those physicians have not been able to attend or have not been aboard when training was available at their facility. Although I would say the District Counsel are there and are available.

There is another problem here that I hesitate to mention, and I don't want to cast any aspersions because I think the culture has changed since Dr. Holsinger came. But we have experienced an attitude or a culture in the VA that these rules are inapplicable and inappropriate as applied to physicians. A lot of the physicians don't want to hear about them. A lot of them are insulted when we tell them about them. And this has to do with their income, with what they can do.

Most of them are affiliated and have affiliated appointments. And the perception we have is that the rules of conduct and the ethical standards at the medical school are quite different from those at the VA. And they would much prefer to operate under the medical school standards. And that causes us a problem.

But I would have to add, after all of that, in the 80's we had a couple of major IG investigations involving mostly physicians and at that time the general counsel advised all of those people in the field to call into the Ethics Officers—and that was me at that time—because there was a problem of conflicting advice. And I found that the great majority of those physicians understood the rules, said they made a lot of common sense, and said, what is all the fuss about.

As to what we can do more, I really don't know. We are open to suggestions.

Mr. EVANS. Well, are you aware that OGE has been critical of the ethics program and found, for example, in 1991 that ethics education programs did not include VA physicians or special government employees?

Mr. HENDRICKS. Sure. And that is absolutely valid. And I would add, what do we do, require the physicians to attend our sessions? How do we get them there?

We have asked and made ourselves available. Physicians have schedules of taking care of patients. We did get physicians to our three sessions two years ago when they were directed to come by either the regional director or the chief medical director. But the rank and file physicians aren't going to stop their practice, travel to a local city very often and do that.

If there is some initiative, like somebody is at risk, they will probably attend locally when a District Counsel does it. But even that is difficult, the District Counsels tell us. They will go out and announce they are having a training session and if the docs are busy, they don't show. And if they are not busy, a lot of them don't show anyway.

Dr. HOLSINGER. I think, Mr. Chairman, it would be worth adding at this point in time, we recently, within the last 60 days, had a one hour requirement for all employees. That includes physicians as well and each hospital medical center director was required to certify back to us, as I was required to certify for the Central Office portion of the Veterans Health Administration, that every employee had spent one hour in the review of the conflict of interest rules and regulations.

Mr. EVANS. Well, what is the sanction then if they don't attend this?

Dr. HOLSINGER. Well, in this case, we believe everyone did that. We have been certified back to. I have no way of even guessing that someone failed to do that.

I know, for example, that I sat down and read through that packet of information and it did take me approximately an hour to do so. So I can assure you that I have done that. I suspect everyone at this table has done that.

This was a requirement by the Secretary. It was a department-wide operation. And the point is simply that we have, I think, throughout the department had one hour of scheduled training in this arena in just the last 60 days.

Now previous to that, I think Mr. Hendricks is correct, we have not always trained every individual. But we are continuing to look for ways in the future to make sure that we can include that kind of training for chiefs of staff, for example, service chiefs and so on, in the specific types of courses that we provide to them directly.

Mr. EVANS. All right.

Mr. HENDRICKS. Mr. Chairman, could I respond to your question, what is the sanction?

Mr. EVANS. Yes.

Mr. HENDRICKS. My view is the sanction should be the same as for any employee who disregards a direct order or who violates a manual. And I think Mr. Trodden referred to it.

First you might counsel him and require him to do it. If he continues to fail to follow the rules, then you take appropriate action. That has been a problem in VA. We have not done that well.

Mr. EVANS. VA, I understand, is going to issue a new directive to require VA medical center directors to verify the status of their chiefs of staff participation in outside professional activities. Just how will this verification of status be accomplished?

Dr. HOLSINGER. We have a directive that is in final concurrence. We have already issued one that deals with all physicians. But we are issuing one that is specifically germane to chiefs of staff that will require a particular set of processes under which they can receive outside remuneration.

They can only do that, since they can only be full-time under the law, under a teaching agreement or a consultation agreement that will have to spell out the specifics of what that teaching and consultation is. It must be reviewed by not only the personnel officer at the local hospital before it comes forward, but also the District Counsel. And Mr. Hendricks and the General Counsel's field people will then come forward and it will be reviewed in a branch office of the Deputy Under Secretary's office.

Mr. EVANS. This will apply only to chiefs of staffs, not to service chiefs?

Dr. HOLSINGER. Service chiefs will be handled with a similar type of arrangement, reviewed by the personnel officer, reviewed by the District Counsel, but the approval will be made at the medical center director level.

Mr. EVANS. Will full-time VA employees who have accepted outside employment before requesting and receiving approval by the VA be disciplined for that?

Dr. HOLSINGER. Well, at this point in time, Mr. Chairman, the main thing we are trying to do is to make sure that every single one of them is under an appropriate teaching or consultation agreement. Once we have made sure that we have cleaned up our whole situation, then in the future if an individual does that, first of all we would take disciplinary action, and second of all we would disallow the payment under that agreement if it has not been approved in advance.

Mr. EVANS. Will effective VA enforcement of ethics requirements and federal standards of conduct jeopardize affiliation?

Dr. HOLSINGER. It depends on how one would approach that. If we approached it under the terms of the General Accounting Office's recommendations, the answer to that would be a resounding yes.

I think that the General Accounting Office, in their report and certainly in their testimony, failed to, I think, identify that there was a difference between the practice of contracting and the practice of medicine.

We believe that if we do as we are currently handling our conflict of interest situations, where the practice of contracting is a contracting officer's responsibility and the practice of medicine is the physician's responsibility and we don't mix those two, then we can appropriately handle this without any fallout on our affiliations.

If we were to, for example, determine that a service chief or a chief of staff was unable to carry out their duties of guaranteeing the quality of care to America's veterans as our patients, then I think that would have a major impact on our affiliations and in fact would probably spell the death knell of them.

I would only recommend you do one thing, and that is to read Dr. Paul Magnuson's Ring the Night Bell. He is one of my predecessors as Chief Medical Director. He was involved with the establishment of the affiliations. And you can see what the VA had sunk to at a time when it did not have affiliations. I would hate to see us return to that kind of a debacle.

Mr. EVANS. Will you be discussing the GAO recommendations and consulting with OGE?

Dr. HOLSINGER. We are more than happy, as Mr. Hendricks indicated, to discuss any of these ramifications that we might have with OGE. We have done that historically. We will continue to do that now and in the future.

Mr. EVANS. Thank you very much. I appreciate your testimony here today and your continued work.

Dr. HOLSINGER. Mr. Chairman, I would just like to take one moment of personal privilege, if I might. This may very well be my last opportunity to testify before you, as chairman of this subcommittee. I just want to tell you how much I have enjoyed the last three years.

You have been extremely helpful to us as we have worked out some of the problems that have occurred within the Veterans Health Administration. I think you can see that we are clearly determined to make sure that this problem is laid to rest once and for all. I made you that promise back at the last hearing and I am continuing to carry that out and will until such time as I leave. But I just wanted to tell you thank you.

Mr. EVANS. Well, thank you, doctor. And we appreciate your contribution in the VA and wish you luck in the future. Thank you all very much.

Our final witness today is Stephen Potts, Director of the Office of Government Ethics. Steve is accompanied by Gary Davis, General Counsel, and Jack Covaleski, Associate Director for Office of Program Assistance and Review.

Steve, we will have your statement entered into the record. If you care to summarize from it, you may proceed in any way you wish.

STATEMENT OF STEPHEN D. POTTS, DIRECTOR, OFFICE OF GOVERNMENT ETHICS, ACCOMPANIED BY F. GARY DAVIS, GENERAL COUNSEL, AND JACK COVALESKI, ASSOCIATE DIRECTOR, OFFICE OF PROGRAM ASSISTANCE AND REVIEW

Mr. POTTS. Thank you, Mr. Chairman. We appreciate the opportunity to appear today to discuss certain issues that arise as a result of the Department of Veterans Affairs contracting for services of scarce medical specialists.

As you introduced, Mr. Covaleski is on my left. He is the Associate Director for Program Assistance and Review. And the General Counsel of OGE is on my right, Mr. Gary Davis.

At the conclusion of my comments, any questions that you may have or any other person on the committee or counsel to the committee, I will be glad to respond. Of course, if they would like to address those questions to either Mr. Covaleski or Mr. Davis, they will be happy to respond.

OGE, as we call the Office of Government Ethics, is only in a position to speak generally about some of the issues you noted in your letter of invitation. But we are happy to assist you with what information we can provide.

I would, however, like to place OGE's role into some context before specifically addressing some of your concerns.

OGE was established by the Ethics in Government Act of 1978 and made responsible for providing overall direction of Executive Branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency.

The responsibilities of OGE fall into six general areas: regulatory authority, financial disclosure, education and training, guidance and interpretation, enforcement, and evaluation.

Our office is organized into three major areas: the Office of General Counsel and Legal Policy, which Mr. Davis heads, the Office of Program Assistance and Review, which is headed by Mr. Covaleski, and the Office of Education.

As a small agency with about 92 employees, we are not able to carry out the day-to-day operations of an ethics program for over five million civilian and uniformed Executive Branch officers and employees alone.

The Ethics in Government Act envisioned, and therefore OGE requires, that each agency head select a Designated Agency Ethics Official, which we refer to as a DAEO, and provide the DAEO with the staff and resources necessary to run the ethics program in that particular agency.

These DAEOs and their staffs then are responsible for conducting the federal ethics program on-site, giving advice and guidance on the range of matters affecting individuals covered by the ethics program.

The Office of Program Assistance and Review performs oversight of ethics programs in Executive Branch departments and agencies. Visiting teams of OGE management analysts perform on-site reviews at agency headquarters, regional offices and military installations. They review all elements of the ethics program and make recommendations to strengthen those ethics programs.

Management analysts plan and conduct the reviews, report their findings on the review of an agency program and then conduct follow-up activities until OGE is satisfied that the agency has taken appropriate steps to remedy any program deficiencies found and discussed in the report.

This type of program review was first conducted at the Department of Veterans Affairs in 1982, again in 1986, and more recently in 1991.

In addition, in 1990 we issued two letter reports on the ethics programs at the Houston DVA Medical Center and the Houston DVA Regional Office. Copies of those reviews and reports have been provided to the subcommittee previously and will provide the

basis for our answers with regard to our knowledge of VA's policies and ethics counseling programs.

You also asked generally about outside employment restrictions for VA employees.

Employees of the Department of Veterans Affairs are subject generally to precisely the same restrictions relating to outside employment that apply to any Executive Branch employees. My complete statement outlines the current applicable laws and regulations that govern that.

Before closing, let me just address a couple of things that have come up during the statement presentations, the oral discussions, and in your comments.

At the end of your comments, Mr. Chairman, you suggested there might be several possible legislative initiatives. I would just like to point out that as to the first two—one, requiring part-time VA employees to request and obtain VA approval in advance for outside employment income, and then second, prohibiting full-time VA employees for accepting remuneration for outside employment—if the VA decided to deal with those issues and thought that was a good idea, they could do so by supplemental regulation.

I think there was testimony earlier that the standards of conduct which apply across the board to all Executive Branch employees went into effect February 3 of this year. Those regulations specifically provide for the possibility of agencies supplementing our Executive Branch-wide regulation with rules appropriate just to that particular agency.

If the VA chose to do so, they could supplement by issuing supplemental regulations, subject to submitting those proposed supplemental regulations to OGE for our review and concurrence.

In addition, on the third matter—requiring VA employees who request outside employment income to make a full disclosure of material information—that information could be provided on what we refer to as the SF-450, which is the confidential financial disclosure form. That is information which could be required at VA as part of the confidential system for those lower ranked employees who are not part of the public financial disclosure system.

In addition, I would like to just say, right up front, that having listened to the testimony of the IG and the GAO and the Department of Veterans Affairs, it seems to me that what it really comes down to is the issue that we are facing this morning—the question about qualitative assessment of performance. And that I think is really the problem.

In other words, it sounds to me that when focusing on participation in the contracting itself for scarce medical resources, the VA and the IG, everyone agrees that it is not appropriate for someone who is on the payroll of both the medical school and the VA to participate. That also seems to be true when there is an assessment of the quantitative performance of the contract.

So it seems that we have narrowed it all down to this question: whether or not there is a conflict or an appearance of conflict when a medical officer that is being paid by both the medical school and the VA can be involved in the qualitative assessment of the performance.

Having listened today and having talked it over within OGE prior to this hearing, we certainly feel that at the very least it does present an appearance of a conflict problem.

So that really is where we are at this point. But we also recognize that we think it really takes a case-by-case evaluation of how to deal with a particular situation—in a particular medical facility, with its specific relationship they have with the medical school in that community.

That concludes my comments. I would like to say we appreciate the opportunity to participate in the hearing and we are here to answer any questions you may have.

[The prepared statement of Mr. Potts appears on p. 56.]

Mr. EVANS. Thank you very much.

In commenting on the draft report, you indicated a willingness to meet with VA officials to discuss the issues raised in the report, essentially, and you agreed that issues presented by the GAO needed to be addressed not only at the VA facilities visited, but all other VA facilities where similar situations may exist.

Has any VA official requested to meet with you in that regard?

Mr. POTTS. As Mr. Hendricks testified, we have met with him and other members of his staff. There has been an ongoing discussion of a lot of these problems for quite some time.

Mr. EVANS. What advice have you offered based on information reported by the GAO to this point?

Mr. POTTS. Well, I think it is fair to say that the discussions have resulted in a narrowing of these issues.

I really can't say specifically it was because of the consultations with us that VA seems to have reached the conclusion that they are now convinced and are taking action to deal with this problem of chiefs of staff, or I guess now it is only the service chiefs, who are involved in letting the contracts. They definitely, when employed by both the VA as well as the medical school, shouldn't be involved in setting the terms and conditions of the contract with the medical school.

And also I understand they agree now that the service chief shouldn't be involved when VA is analyzing and discussing the quantitative performance under the contract.

So I think we really have sort of narrowed things down to this question of qualitative performance.

Mr. EVANS. If quality assurance activities can create the appearance of a conflict, what solution do you propose?

Mr. POTTS. Well, I would hope that we would get together with Mr. Hendricks and whomever else he thinks is appropriate from the VA.

One of the possibilities here is the use of waiver authority under section 208, which is the criminal conflict of interest statute. And in appropriate cases and circumstances, we can grant a waiver to permit that activity.

That is in contrast, for example, to procurement of the contract to begin with or the letting of the contract. They are under the Procurement Integrity Act. We don't have that flexibility. So we would not have the option of doing that. But I am glad to see that that really is off the table.

Mr. Davis has pointed out that the head of the agency actually grants the section 208 waivers, after consultation with us.

Mr. EVANS. Would you recommend granting those kinds of waivers in these kinds of cases?

Mr. POTTS. I would not want to make a judgment on an overall basis because I think it really does get down to a case-by-case analysis of whether it is appropriate. I would not want to see any kind of blanket waiver just across the board, automatically granted. I think you really need to look at the facts and circumstances of each case.

Mr. EVANS. In commenting on the draft report, the Secretary of Veterans Affairs, Mr. Brown, wrote, "Participation in direct contract negotiation or administration must be distinguished from the type of supervision of health care services that arises from physicians' duties relating to the practice of medicine."

Do you agree with that statement?

Mr. POTTS. I think there is a distinction. I can see that. In perhaps most of the instances where there is oversight by the chief of service who is making evaluations of the qualitative performance of the physicians that are coming over from the medical school, that is perfectly appropriate and normal and desirable.

But I don't think it takes a great deal of imagination to conjure up circumstances where it would be of concern.

In other words, the instance that was cited by, I believe, Mr. Trodden is certainly one. Suppose the chief of service is not very happy with the performance of a particular physician and asks the medical school to have that physician replaced, and they refuse. You know, I would like to think that the chief of service at that point is totally free and independent in making a judgment as to what action the VA ought to take under those circumstances, and not have his judgment colored at all by the fact that he himself is also on the medical school faculty.

Mr. EVANS. The Secretary also attempted to make a distinction between evaluating the performance of a contractor and evaluating the performance of an individual contract physician. Would you care to comment on that?

Mr. POTTS. I would say the same thing occurs. I mean, I think they are different. Certainly the first is almost a legal judgment as to whether or not they are conforming and performing according to what is required by the contract.

But then it becomes less clear because some of the requirements under the contract have to do with the provision of medical services. And obviously an attorney on the staff is not going to be in a good position to make that evaluation. It would take someone with, I am sure, a medical background to be able to do that.

Mr. EVANS. A letter signed by Jesse Brown states, in part, "We believe that supervision in the environment of an affiliation relating to the supervision by those VA physicians who are responsible for the quality of care basically does not give rise to a conflict of interest." Do you agree with this statement?

Mr. POTTS. I don't agree with it as a flat statement. I think it may be true in part or in large part. But I do think that there are possible instances that can arise that still give cause for concern. And I guess what that drives me to is to suggest that we really sit

down and get our heads together and do an evaluation and make sure that the VA is going through it on a case-by-case basis, considering whether or not, for example, to employ this waiver authority.

Mr. EVANS. Minority counsel has no questions.

Thank you very much, Mr. Potts. We appreciate your testimony.

I want to thank all the witnesses that testified today, and particularly the General Accounting Office for the important contributions it has made.

In addition to those GAO representatives who appeared at the witness table today, the chair acknowledges with thanks David Baine, Bill Stanco, John Borrelli and Susan Poling.

Likewise, the chair commends the Office of Inspector General for its examination of the VA's scarce medical specialists contract program and VA employee conduct.

As the chair noted earlier, the VA has begun to address the serious problems that have plagued the scarce medical specialists contract program for years. These efforts must continue and be successful.

In this regard, the chair encourages the Department to consult with the Office of Government Ethics on matters before this subcommittee here today.

Someone suggested the solution is a matter of better policy enforcement only. The chair does not agree with this assessment. The chair expects the Department to re-examine this subject and to revise its policies as necessary, so that VA physicians are not placed at risk of criminal prosecution.

I want to thank the Members of the subcommittee for their attendance and for their assistance.

If there are no other comments, the subcommittee will stand adjourned.

[Whereupon, at 10:09 a.m., the subcommittee was adjourned.]

APPENDIX

Statement of

Honorable Lane Evans, Chairman

Subcommittee on Oversight and Investigations

Scarce Medical Specialist Contracts: Are VA Ethics Policies and Enforcement Adequate?

May 19, 1993

Good morning and welcome. This morning the Subcommittee is continuing its review of VA's scarce medical specialist contract program.

There is some good news to report today.

Days prior to the Subcommittee's 1992 hearing, after five years doing very little, VA took action, to begin correcting problems which have plagued the scarce medical specialist contract program for years.

The actions taken by VA last July have begun to produce results. The Subcommittee strongly encourages VA to continue moving forward with this effort.

The Subcommittee also understands that VA physician pay reform is working. VA is now better able to recruit and hire physicians, including specialists, whose services were previously obtained by contract. VA reliance and spending on scarce medical specialist contracts can both now be reduced.

All the news is not good, however.

Nearly six years ago, in July, 1987, I raised the issue of possible conflicts of interest in the scarce medical specialist contract program. In spite of the recent corrective actions taken by VA, my concern still exists.

While other issues may be raised today by Members of this Subcommittee, I hope this issue will be the focus of special attention.

This hearing is not an indictment of all VA employees and certainly not the countless thousands of VA employees who uphold the highest standards of ethical conduct and who provide the highest quality of care and services to our nation's veterans.

By the same token, we can't simply close our eyes to the wrong-doing or potential wrong-doing of a few, because of the good done by so many.

This hearing is not being held to weaken or destroy the VA medical system. In fact, just the opposite is true.

According to the recent GAO report, some medical schools with VA contracts pay VA physicians who have contract responsibilities as much as $75,000 a year for part-time employment. In more than one case, the extra work to be done for that money couldn't be described or identified.

Unfortunately, this practice doesn't appear to be isolated. When a practice is wrong, simply repeating it doesn't make it right. An unethical practice, even if part of the VA culture, is still unethical.

In addition to the facts, we must also be sensitive to public perception, confidence and trust. VA ethics standards require this vigilance.

While our examination today may consider many issues, we need to pay particular attention to the contract-related duties of VA physicians who are also compensated by the contractor.

When VA pays an affiliated medical school too much for contract services, that's lousy management.

When an affiliated medical school pays a VA physician for work that can't be described, that's lousy management.

When these practices are taken together, they raise an obvious question -- if VA-paid excess contract costs are being recycled as gratuities to VA employees?

I believe VA can put its house in order. I'm strongly committed to helping VA achieve that end.

The findings which have been presented to the Subcommittee suggest several possible legislative initiatives. These include:

- Requiring part-time VA employees to request and obtain VA approval in advance for outside employment income;
- Prohibiting full-time VA employees from accepting remuneration for outside employment;
- Requiring VA employees who request outside employment income to make a full disclosure of material information; and
- Last, but certainly not least, repealing VA's authority to negotiate contracts with affiliated schools of medicine and requiring competitive bids for all VA scarce medical specialist contracts.

These initiatives may be considered in the future.

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Oversight and Investigations,
Committee on Veterans' Affairs
House of Representatives

For Release
on Delivery
Expected at
8:30 a.m. EST
Wednesday,
May 19, 1993

VA HEALTH CARE

Enforcement of Federal Ethics Requirements at VA Medical Centers

Statement of Lawrence H. Thompson
Assistant Comptroller General,
Human Resources Programs

GAO/T-HRD-93-22

SUMMARY

GAO recently reported on potential conflict-of-interest situations at Department of Veterans Affairs medical centers. Senior managers at nearly one-third of VA's 158 centers receive part-time employment incomes--in many cases, exceeding $40,000 a year--from affiliated medical schools, generally for teaching or consulting activities. The medical centers contract with the same medical schools for scarce medical specialist services, totalling millions of dollars. At centers GAO visited, managers were participating on VA's behalf in contract awards or administration--activities prohibited by federal conflict-of-interest rules.

GAO recommended that VA move quickly to address these situations. First, VA's ethics policies need to be revised to clearly show the types of dual employment activities that managers may and may not engage in. Second, stronger enforcement procedures are needed, including improvements in VA's oversight of managers' requests for outside employment.

VA acknowledges that conflict-of-interest situations may have occurred and is taking or plans to take several steps to improve enforcement procedures. GAO believes that VA is moving in the right direction and that VA's procedural changes, when fully implemented, should help prevent conflicts-of-interest. However, GAO disagrees with VA's views regarding the appropriateness of VA managers' supervision of contract physicians. GAO believes that permitting VA managers to perform supervisory activities leaves them at risk of violating conflict-of-interest laws or regulations.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today, as the Subcommittee continues its examination of the Department of Veterans Affairs' (VA) use of contracts to purchase scarce medical specialists' services from medical schools.

During your August 1992 hearing, we reported that VA had not sufficiently improved its management controls to avoid serious contracting problems,[1] which were initially addressed during a July 1987 hearing. These problems included VA medical centers' purchasing of unneeded services or paying unnecessarily high prices. During the 1987 hearing, VA witnesses assured you that adequate controls were in place to meet federal ethics requirements.

At your request, we examined whether VA managers who are receiving incomes from medical schools are participating in VA contracting activities involving the medical schools and, if so, the conflict-of-interest implications for these managers. To do this, we reviewed federal ethics laws and regulations and discussed them with officials of the Office of Government Ethics. We also assessed VA's policies and procedures for implementing federal requirements and had discussions with the Under Secretary for Health and the ethics officer. In addition, we reviewed the 1990 outside employment activities of senior managers at 126 medical centers that had scarce medical specialist contracts. Finally, during visits to three VA medical centers and their affiliated medical schools, we discussed contracting procedures and observed operating practices.

Mr. Chairman, I wish that I could report today that we agree with VA's enforcement of federal ethics requirements, but regrettably, that is not the case. VA's operating practices give rise to situations at medical centers which, at a minimum, create the appearance of a conflict of interest and, at worst, place senior managers at risk of criminal prosecution.

As you know, having confidence in the integrity of federal employees is essential to the American public. Toward this end, presidents have issued several executive orders establishing standards of ethical conduct for federal employees. In addition, the Congress enacted the Ethics in Government Act of 1978, which, among other things, created the Office of Government Ethics to provide overall policy direction related to preventing conflicts of interest by employees in executive agencies. In 1989, the Procurement Integrity Act further limited certain federal employees' outside activities.

Federal ethics requirements place limitations on activities of government employees who have dual employment. These employees are prohibited from participating personally and substantially on behalf of the government in particular matters in which they or their outside employers have financial interests. In addition, VA's standards-of-conduct specify that employees should avoid any actions, that may lead to or create the appearance of conflicts of interest.

As we reported to you last month,[2] senior managers at nearly one-third of VA's 158 medical centers receive part-time employment incomes--in many cases, exceeding $40,000 a year--from affiliated medical schools, generally for teaching or consulting activities. The medical centers contract with the same medical schools for

---

[1]VA HEALTH CARE: Inadequate Controls Over Scarce Medical Specialists Contracts (GAO/HRD-92-114; July 29, 1992) and (GAO/T-HRD-92-50; Aug. 5, 1992).

[2]VA Health Care: Inadequate Enforcement of Federal Ethics Requirements at VA Medical Centers (GAO/HRD-93-39; Apr. 30, 1993).

scarce medical specialist services. These contracts total millions of dollars and generally are negotiated without competition.

At the VA centers we visited, managers received substantial salaries from medical schools and also participated on VA's behalf in the award or administration of contracts--activities that are prohibited by federal conflict-of-interest regulations. For example, they

-- developed or participated in the development of contract justifications,

-- reviewed or participated in the review of contract proposals,

-- negotiated or participated in contract negotiations, and

-- supervised contract employees' activities.

The potential conflict-of-interest situations we found raise serious questions about the ability of VA's managers to maintain their independence and impartiality. Assessing the legalities of such situations is complex and generally done on a case-by-case basis. However, at a minimum, the appearance of conflicts of interest exists involving VA managers' participation in contract award and administration activities with the medical schools that also employ them.

We believe that the Secretary of Veterans Affairs should move quickly to address potential conflicts of interest. To do this, we recommended in our April 1993 report that VA's policies be revised to clearly show the types of dual employment activities that medical center managers may engage in under federal ethics requirements. Stronger procedures also need to be established to enforce the revised policies, including procedures for reviewing and approving managers' outside employment. Finally, we believe it is essential that VA work closely with the Office of Government Ethics to develop appropriate guidance to help medical center managers avoid conflict-of-interest situations.

The Secretary of Veterans Affairs commented, in a March 23, 1993 letter, on a draft of our report. He generally agreed that VA has problems enforcing federal ethics requirements in some situations involving dual employment of medical center managers. While acknowledging that conflict-of-interest situations may have occurred, he said that the Under Secretary for Health and the ethics officer are taking steps to implement our recommendations.

As we discuss in a supplement to our April report,[3] we are encouraged by the Secretary's response and believe that VA is moving in the right direction. VA's actions, when fully implemented, should strengthen VA's enforcement. However, we are troubled by some of the Secretary's views regarding the appropriateness of VA managers' involvement with contract activities of medical schools who employ those managers. We believe that VA managers' supervision of contract physicians leaves these managers at risk of violating conflict-of-interest laws or regulations.

Now, I would like to describe, in more detail, potential conflict-of-interest situations and highlight major weaknesses in VA's efforts to implement federal ethics requirements. I will also discuss the Secretary's response to our recommendations.

---

[3]Supplement to VA Health Care: Inadequate Enforcement of Federal Ethics Requirements at VA Medical Centers (GAO/HRD-93-39S; May 12, 1993).

POTENTIAL CONFLICT-OF-INTEREST SITUATIONS

Two types of managers face great risk of potential conflicts of interest in carrying out their duties at VA medical centers while also employed by medical schools; namely, chiefs of staff and chiefs of individual medical services, such as anesthesiology or radiology. These managers are generally the highest ranking physicians at medical centers and, as such, share primary responsibilities for all clinical aspects of the development, organization, implementation, and support of VA patient care, education, and research activities. Let me explain how potential conflict-of-interest situations may arise.

Chiefs of Staff

A chief of staff's responsibilities include ensuring that physicians, whether VA or contract employees, are providing high-quality medical care and that corrective actions are initiated when warranted. At one medical center we visited, a chief of staff served as a technical representative for contracts for anesthesiology and pathology services, totalling about $1.2 million a year. In this capacity, his responsibilities included:

-- monitoring the medical school's performance and notifying VA's contracting officer if contract activities are not proceeding satisfactorily or if problems are anticipated and

-- developing a record-keeping system to assure that VA pays only for contract services that the medical school performs.

The chief of staff's responsibilities also included recruiting certified and licensed professional staff. These activities can directly affect the amount of contract services purchased from a medical school. For example, the amount of contract services needed would be reduced if more VA anesthesiologists were recruited directly by VA medical centers rather than to continue to rely on medical schools for those services.

This chief received more than $40,000 from a medical school at the same time that he was participating on VA's behalf in these contract activities involving the school. He reported to VA that his duties, as a medical school employee, included non-clinical consultations and teaching at the school.

Chiefs of Service

Like chiefs of staff, chiefs of various medical services are responsible for monitoring the quality of medical services provided under contract with medical schools and taking corrective actions where warranted. For example, at one medical center we visited, a full-time service chief supervised daily activities of physicians working under a contract valued at over $800,000 a year. His responsibilities included scheduling work and managing the service to ensure that contract physicians appropriately completed their work. He also approved contract physicians' time and attendance records that were used to certify contract payments made to the medical school.

This service chief received over $40,000 from a medical school for teaching at the same time that he participated on VA's behalf in activities involving the administration of the contract, making decisions that could affect both of his employers.

Also, some service chiefs at the centers we visited worked part-time for both VA and medical schools. The chiefs' part-time employment for medical schools consisted of performing services under the schools' contracts with the VA centers. Thus, as VA

service chiefs, these managers were responsible for overseeing the same contracts under which they worked for the medical schools.

MANAGERS ACCEPT MEDICAL SCHOOL EMPLOYMENT WITHOUT REQUESTING VA APPROVAL

VA policy requires all full-time employees to request approval before engaging in outside employment, in part, so that potential conflicts of interest may be identified. This critical management control, however, was not achieving the intended results. First, most chiefs of staff did not comply. Second, even when they did comply no one in VA's headquarters offices dealing with ethics-related issues required them to provide sufficient information so that potential conflicts of interest could be adequately assessed.

Of VA's 158 medical centers, 45 had chiefs of staff who received income from contracting medical schools in 1990. Of these chiefs, only 14 received approval for employment with the schools; the rest accepted employment without requesting authorization. When reviewing outside employment requests, VA headquarters officials rarely requested, and chiefs seldom provided, information concerning VA management responsibilities involving medical schools.

For example, requests did not include information on the medical center's contracting activities with medical schools or the chief's potential activities involving the medical school. Frequently, requests did not include information on the nature and extent of the work to be provided at the medical school. Without such information, VA reviewing officials will have great difficulty identifying potential ethics violations.

Like chiefs of staff, full-time chiefs of service are also required to request approval for outside employment. However, VA policy does not require part-time chiefs to seek approval for outside employment. We believe such approval is needed because many service chiefs are part-time VA employees and they have the same VA management responsibilities as full-time employees. As such, they face the same exposure to potential conflict-of-interest situations.

The Under Secretary for Health has made procedural changes to resolve the weaknesses we identified in VA's outside employment review process, including revised reporting requirements. These changes, when fully implemented, should help identify potential conflict-of-interest situations, assuming they are applied uniformly to full- and part-time managers.

ENFORCEMENT ALONE IS NOT THE SOLUTION

In his March letter, the Secretary stated, and we agree, that vigorous enforcement of federal ethics rules is needed to address problems we found. He believes that VA has provided ample, clear guidance. The fact that an employee does not obey the rules, he said, does not necessarily mean that the employee does not know the rules. We disagree that VA has provided adequate guidance to medical center managers on what activities are permissible and impermissible. Our discussions with senior managers indicated that while they were aware of some fundamental ethics requirements, they were either unaware of or unclear about how these requirements affected their own activities.

The Secretary contends that managers can supervise a contract between a medical center and affiliated medical school when they are employed by both, if the purpose of the supervision is related to quality of care. Using this interpretation, it is permissible for managers to supervise the day-to-day activities of medical school contract physicians. This includes determining the quantities of contract medical services needed and whether an

appropriate quantity and quality of services are received. The Secretary contends that such supervision is focused on the level of health care being rendered by individual contract physicians as opposed to analyzing the medical school's performance under the contract.

We find the Secretary's interpretation troubling, because it appears that such a distinction is impractical. We believe that individual managers' assessments for quality-of-care purposes, might become the basis for measuring the medical school's contract performance. This is especially true if the contracts are not rigorously evaluated as was the case at the centers we visited. Without such assessments, medical centers would more likely have to rely on individual manager's assessments in determining whether contracts should be renewed or revised.

The Secretary contends that individual manager's clinical oversight would not have any effect on the center's contract. He said, for example, that if a service chief was dissatisfied with a contract physician's performance, the medical school would provide another physician, without affecting contract terms or price. Although some problems may be dealt with this simply, more complicated situations could arise if the medical school does not want to replace a contract physician. In these situations, are service chiefs expected to challenge the medical schools which employ them or raise their concerns to chiefs of staff who may also be employed by the schools?

At one medical center we visited, the service chief was the only VA employee in the service. What if the contractor does not send physicians with the requisite experience in accordance with the contract? Who is in a position to know? In addition, a myriad of daily decisions affect the contract. Who certifies contract physicians' time and attendance records? If it is not the service chief, who provides the information upon which certification is based? We believe that if chiefs are doing their jobs appropriately and are responsible for overseeing the delivery of medical services, they would, of necessity, make daily decisions affecting the contract.

In our April report, we recommended that the Secretary consult with the Office of Government Ethics in developing better guidance to help managers avoid situations that place them at risk of violating ethics requirements. The director of the Office Government of Ethics agrees that the issues we raise need to be resolved and he expressed interest in working with VA to do this. However, the Secretary has not indicated whether he plans to work with the Office of Government Ethics. The differing opinions over interpretation of the ethics requirements further highlights the need for VA to consult with the Office of Government Ethics to alleviate any questions regarding medical center managers' ethics requirements.

- - - - -

In summary, Mr. Chairman, ethics laws and regulations are intended to prevent placing employees in situations where their loyalties are divided; that is, situations in which managers, in discharging their obligations to one employer--a medical school--may be acting against the interests of their other employer, the VA medical center. We recognize that managers may determine, in the utmost good faith, that they will not be influenced by either relationship. Nonetheless, we believe that it is difficult to guarantee that loyalty to one employer will not be an unconscious factor in making decisions for another employer. By accepting dual employment with contract medical schools, managers currently face situations in which such divided loyalties inevitably and unavoidably arise.

- - - - -

This concludes my prepared statement. We will be glad to answer any questions you and members of the Subcommittee may have.

STATEMENT OF MR. STEPHEN A. TRODDEN
INSPECTOR GENERAL
DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
VETERANS' AFFAIRS COMMITTEE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

HEARING ON
THE DEPARTMENT OF VETERANS AFFAIRS
USE OF SCARCE MEDICAL SPECIALIST CONTRACTS
MAY 19, 1993

Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to discuss the actions the Office of Inspector General (OIG) has taken to review the Department of Veterans Affairs' (VA) use of the authority to contract for services of scarce medical specialists. When I testified at the August 5, 1992, hearing on this subject, I reported the preliminary results of our VA-wide audit of scarce medical specialist (SMS) contracts. We have since completed that audit and today I would like to discuss our findings. I would also like to comment on employee standards of conduct as they pertain to SMS contracts and other Veterans Health Administration (VHA) activities.

In January 1992 my office began an audit of affiliations between medical schools and VA medical centers (VAMCs). The main purpose of the early stage of this audit was to identify affiliation activities that needed to be reviewed in-depth. As part of the audit, we included steps to follow up on prior audits that pertained to affiliations issues. One of these issues was SMS contracts. After we began our initial research, it became apparent that VHA had not corrected problems identified by a 1987 OIG audit and that contract costs were continuing to increase. Because of this I directed my staff to perform a new VA-wide audit of SMS contracts with affiliated medical schools. In March 1993 we issued our report on this audit.

In Fiscal Year 1992 VAMCs spent about $63.6 million on 216 noncompetitive SMS contracts with medical schools. Our audit focused on the 100 largest contracts, each of which cost $100,000 or more. The total annual cost of the selected contracts was $44.3 million.

Audit Results

We found a very high incidence of noncompliance with the most important SMS contracting rules and regulations. There were two major problems. First, VAMCs usually did not comply with the requirement to use cost or pricing data for establishing contract prices. The required data was not obtained on 90 of the 100

contracts reviewed. As a result, VAMCs paid excessive charges on some contracts. We estimate that the excessive charges on current contracts, including option years, total about $14.5 million. Second, VAMCs generally did not follow important rules designed to ensure the integrity of the contracting process. For 91 of the 100 contracts reviewed, VAMCs did not comply with 1 or more major requirements, not counting the cost or pricing data requirement.

We concluded that VAMCs did not adequately comply with applicable laws, regulations, or VA policies, and internal controls were not adequate to protect VA's interest and resources. Until the compliance and internal control deficiencies are corrected, there is a high risk of excessive charges on SMS contracts.

Cost or Pricing Data

Federal Acquisition Regulations and VA guidelines require VAMCs to obtain certified cost or pricing data for noncompetitive SMS contracts expected to cost more than $100,000. This is the single most important SMS contracting rule. In order to negotiate the best possible price, the VA contracting official must have information on the costs the contractor will incur in providing the requested services.

The primary cost a medical school incurs in providing services of scarce medical specialists is the compensation of the physicians who will work under the contract. Contracted work must be done at the VAMC and not at any other location, including an affiliated university hospital. The VAMC provides all the space, supplies, equipment, and administrative support that the contract staff need for treating VA patients. Because of this, the school incurs few, if any, costs other than physician compensation. A SMS physician's compensation package typically consists of salary, bonuses, fringe benefits, malpractice insurance, and various perquisites such as payments for medical licenses, journal subscriptions, memberships in professional organizations, and continuing education.

As mentioned previously, VAMCs did not meet the cost or pricing data requirement for 90 of the 100 contracts reviewed. VAMCs did not obtain information on medical school costs for 56 of the 90 contracts. For the other 34 contracts, the cost information provided to the VAMCs was inadequate for establishing fair and reasonable contract prices. These problems occurred because VAMC managers did not comply with applicable laws and regulations.

For example, non-contracting officials such as chiefs of staff and clinical service chiefs often took on contracting officer responsibilities for SMS contracts. In their execution of this role, these officials failed to obtain necessary contract cost and pricing data -- a key provision of VA's acquisition regulations. Apparently this course of action was influenced by the close relationship of VAMCs with their affiliated medical schools and widespread misunderstanding of the legislation that permits noncompetitive award of SMS contracts to such schools.

The most important action that VHA can take to reduce negotiated SMS contract costs and to strengthen program integrity is to aggressively enforce the requirement that contracts must be based on cost or pricing data. To this end, we made four recommendations for improving controls over SMS contracting. The Under

Secretary for Health concurred with these recommendations, and VHA has begun implementation action. Specifically, VHA has agreed to:

- Give VAMCs detailed guidance on obtaining and using cost or pricing data, including specific explanations of allowable and unallowable costs.

- Develop a uniform format or template for the prescribed cost or pricing data and require VAMCs to use it for all contracts.

- Establish procedures for monitoring compliance with the cost or pricing requirements.

- Require VAMCs to perform a one-time review of all current contracts to obtain cost or pricing data, to adjust contract prices as necessary, and to pursue recovery of any excessive charges identified by the review.

To implement these corrective actions, VHA has been working with my staff and with VA's Offices of General Counsel and Acquisition and Materiel Management. It is our understanding that VHA plans to complete implementation by October 1993. We believe that implementing our recommendations will significantly improve the SMS contracting process and reduce contract costs.

Conflicts of Interest on SMS Contracts

Our audit also found that VAMCs often did not comply with various legal, regulatory, and policy requirements designed to provide reasonable assurance that the integrity of the SMS contracting process is protected.

The most important of these requirements pertains to conflicts of interest Federal laws and regulations prohibit VA employees who are also medical school employees from participating in contracting or procurement activities that could result in conflicts of interest. For SMS contracts the conflict of interest risk is that a VAMC chief of staff or clinical supervisor who also receives pay from a medical school might improperly influence the contracting process in favor of the school. In 1991 VA's Office of General Counsel issued two letter opinions which concluded that Federal ethics laws prohibited a VA employee who received any pay from the school from participating in any way in the SMS contracting process.

Our audit identified conflict of interest situations in 29 contracts awarded by 19 different VAMCs. The conflicts pertained to contracts with prices ranging from a low of $113,514 to a high of $1.65 million. In all 29 cases VA physicians who received remuneration from the schools negotiated contract prices, approved contracts, monitored compliance with contract specifications, and/or authorized payments for contract services.

The 29 conflict of interest situations involved 23 different employees. Some of these employees had responsibilities on more than one contract. Of the 23 employees, 12 were chiefs of staff and 11 were service chiefs. Based on the audit results, it appears that these employees' involvement with the contracts may have violated the conflict of interest rules. The circumstances regarding these potential violations are being compiled by my staff for referral to the Department's Ethics Officer.

Our audit addressed the conflict of interest issue in two ways. First, as discussed earlier, we pointed out in our report that all SMS contracts need to be negotiated, awarded, and monitored only by properly trained VAMC/VA contracting personnel. Second, we recommended that for all SMS contracts the responsible VAMC director must certify that all contracting rules, including the prohibition on conflicts of interest, have been followed. This will make the director accountable for avoiding conflicts of interest. The Under Secretary for Health agreed with our recommendations.

Other VHA Activities at Risk for Ethics Violations

The Subcommittee also asked that I comment on other pertinent Federal statutes, rules, and regulations governing the activities and conduct of VA employees. SMS contracting is merely a microcosm of the potential conflict of interest problems associated with VAMC/medical school affiliation relationships. The risk is that VAMC employees, who also are associated with the affiliated medical school and/or university hospital, may intentionally or unintentionally influence actions which could unfairly benefit the affiliate to the detriment of VA. VAMC employees most at risk for violating standards of conduct and other ethics rules in this context are chiefs of staff, associate chiefs of staff, clinical service chiefs, and other clinical supervisors who receive remuneration or other benefits from affiliated medical schools. This covers almost all supervisory physicians in affiliated VAMCs. We believe there is some risk in at least the following activities:

- Administration of resident salary disbursement agreements
- Certification of time and attendance for VA physicians who also work at affiliated universities
- Negotiation and administration of sharing agreements

For disbursement agreements, we are looking at the accuracy of the salary payments to medical schools and whether VA may be paying for residents who are not actually working at VAMCs. On the issue of physician time and attendance, the question under review is whether timecards are certified to show that staff physicians were working at the VAMC when, in fact, the staff physicians could have been working at the university hospital or at the medical school. If substantiated, these practices could result in significant salary overpayments by VA.

For sharing agreements, the risk is the same as for SMS contracts -- that a supervisory physician would have a conflict of interest by participating in the negotiation or administration of the sharing agreement. We have not undertaken any recent audit work on sharing agreements; however, we do plan to perform an audit of these agreements as part of our overall review of affiliation activities.

Conclusion

In summary, where we have identified conflicts of interest and other violations of ethical standards, the problem has been with the enforcement of long-standing rules. For example, the rule against conflicts of interest, even in SMS contracting, has been in effect for many years and has been well-publicized. The problem we found

was that the responsible medical center officials did not enforce the rule. We believe our recommendations that (1) address prohibitive practices in negotiating, awarding, and monitoring SMS contracts and (2) require medical center director certifications that no conflict of interest exists will establish appropriate accountability and ensure the integrity of the SMS contracting process.

Mr Chairman, I would be remiss if I did not call attention to the unique environment at VA with regard to SMS contracting. As you know, legislation exists that encourages VA to enter into affiliation agreements with medical schools. Further, VAMCs are permitted by law to procure SMS services from affiliated medical schools on a sole source basis. This presents a special challenge to VA for ensuring conflict of interest situations do not occur, particularly when key clinical VAMC staff also hold remunerative appointments with the affiliated medical school.

VHA has recently taken several actions to improve compliance with ethics policies. For example, in the near term VHA intends to issue clarifying guidance on VA ethics policies. Also, during this year a multidisciplinary survey team will visit selected VAMCs to assess compliance with ethics requirements. In our opinion, VHA's actions should significantly enhance compliance at the medical center level.

We will continue to look at standards-of-conduct issues in our audits of affiliation activities. If we find problems, we will make very specific recommendations for corrective actions, including disciplinary actions if appropriate. We believe that in pursuing this effort we have the full support of the Secretary and the Under Secretary for Health.

Thank you, Mr. Chairman; that completes my prepared statement. I would be pleased to address the Subcommittee's questions.

Statement of
James W. Holsinger, Jr., M.D.
Under Secretary for Health
Department of Veterans Affairs
May 19, 1993

Mr. Chairman,

Thank you for the opportunity to report on VHA's recent activities in the area of scarce medical contracting. The focus of today's hearing is on the application of ethics and conflict of interest laws to the scarce medical specialist services contracting process. I would also like to discuss the special relationship between VA and its affiliated academic institutions, what VHA has done and is doing that will improve enforcement of the ethics rules that apply to scarce medical specialist services contracting, and how the VA ethics program has addressed these same issues. I will close by commenting on a recent General Accounting Office report which addressed VA enforcement of Federal ethics requirements.

The Affiliation Relationship

VA has maintained close bonds with medical schools for almost a half-century. In 1946, in response to the massive demands on VA because of recently discharged World War II veterans and to shore up some severe quality of care shortcomings, VA issued the historic Policy Memorandum No. 2, which established the basic structure for cooperation between VA and medical schools in providing health care, training the Nation's health care professionals, and conducting medical research. Through affiliation, VA would have access to the best doctors and other professionals in the country to treat veteran patients. The medical school, in turn, would benefit from VA as a teaching hospital for its students.

The special relationship between VA and the medical schools is one of the most enduring and successful public-private partnerships in the Nation. Since 1946, 129 VA

facilities have established affiliations with 105 U.S. medical schools. From the VA's standpoint, we are able to attract high quality medical center staff and managers because of the prestige and teaching income from the affiliated institution. Many of the physicians in an affiliated setting receive VA income for VA responsibilities, and a salary from the school for teaching and other academic responsibilities which are outside the VA tour of duty and unrelated to the VA duties.

Congress has recognized and enhanced the affiliation relationship. In 1966, Congress granted VA special authority to contract for scarce medical specialist services. The regulations implementing this authority permit VA to negotiate these agreements with an affiliated medical school without requiring VA to have open competitive bidding for the agreements. The flexibility to use the affiliate as a sole source on these contracts is essential to maintaining the integrity of accredited educational programs and the quality of care for veteran patients.

While the maturation of the affiliation relationship has brought VA and the affiliates closer together in day-to-day activities, the ethics rules have to some extent acted as a competing dynamic tending to pull VA and the affiliates apart. Recent legislation, such as the procurement integrity law, and renewed emphasis on ethics issues brought about by the implementation of the new standards of conduct reflect greater Government emphasis on "arms-length" dealing with contractors. Although these necessary standards are in some instances perceived to be at odds with the "shoulder-to-shoulder" environment in an affiliated VA medical center, we believe the rules provide a desirable standard for business dealings between VA medical centers and their affiliates. As discussed later in the statement, we are taking steps to improve operating guidance to VAMC's and do not foresee any incompatibility between compliance with these standards and accomplishing VA's health care mission.

Enforcement problems in the ethics area have received increased scrutiny since the mid-1980's. Office of Inspector General activities and Office of Government Ethics audits in the mid-1980's and early 1990's drew attention to inconsistent enforcement of the ethics rules by VHA.

VHA Changes in Procedures Designed to Tighten Enforcement of Ethics Requirements Applicable to Scarce Medical Specialist Services Contracts

In recent years, VHA has addressed scarce medical specialist services contracting problems. Let me summarize what VHA has done, since I last appeared before your subcommittee on August 5, 1992, to address the problems that relate to scarce medical specialist services contracts, including avoiding conflicts of interests.

VA has increased the effectiveness of oversight of these contracts. On July 31, 1992, I appointed a task force to review how VA solicits, reviews, executes and monitors scarce medical specialist services contracts. I have approved the task force's report with some minor changes and, on December 8, 1992, sent it out to all VA medical facilities. The task force recommendations have been incorporated into VA Manual M-1, Part I, Chapter 34, which was approved and sent to VHA field elements on March 11, 1993.

The principal changes in this policy manual include expanded requirements for the justification of contracts, clarification of the role of the contracting officer in negotiations, clear guidance on conflict of interest, and requirements for Central Office review of cost or pricing analyses and pre-award audits. It also clearly reiterates the legal restrictions on payment for on-call or standby services; the limitations on research, education, or other services in contracts; expanded requirements for submission of contracts for VA Central Office review; and emphasis on contract performance monitoring.

Proposed contracts for scarce medical specialist services which are sent to Central Office now must include

much more information justifying the need for the contract and compliance with contract requirements -- including price. With this additional information, the Office of Acquisition and Materiel Management, the Office of General Counsel, and the appropriate clinical service, all of whom review the proposed contracts, have been better able to ensure that contracts are in the best interest of the Department.

We have given contracting personnel at VA medical centers training on these contracts emphasizing compliance with all existing acquisition and conflict of interest laws. We are providing a senior contracting officer at each VA medical center with a "contract symposium," which was developed to provide continuing education on timely acquisition topics, including scarce medical specialist services contracts. The curriculum includes a full day devoted exclusively to scarce medical contracting. The first cycle of this training will be completed by early FY 1994. This training is ongoing, we intend to continue it.

VHA has also taken the following additional steps to improve the scarce medical contract administration process:

On July 31, 1992, I charged a second task force with the responsibility of developing staffing and workload guidelines for anesthesiologists and radiologists. On February 25, 1993, I approved the recommendations of this task force contained in the Report of the Task Force on Staffing and Workload Guidelines for Anesthesiologists and Radiologists. This new policy on staffing and workload guidelines was published on March 25, 1993, as VHA Information Letter IL 10-93-009 and distributed to our field managers by March 30, 1993.

Since July 1992, we have increased efforts to convey on a regular basis the concerns of VHA management and the Office of General Counsel in the area of scarce medical specialist services contracting to those senior VHA officials who are responsible for seeing to it that all VA and Federal government procurement regulations are followed

to the letter. This has been done through national conference calls, discussion in the VHA weekly newsletter, and at the headquarters level at my Key Staff meetings.

On March 19, 1993, we conducted a national video conference on scarce medical specialist services contracting -- with special emphasis on conflict of interest issues -- for our medical center directors, chiefs of staff, clinical service chiefs, and acquisition and materiel management chiefs. I personally participated in this national video conference, as did Dr. Roswell, our AsCMD for Clinical Programs, Mr. Vallowe from the Office of General Counsel, Mr. Beeton from the Office of Acquisition and Material Management, and Mr. Hamerschlag of my staff. We have given the Committee a copy of the videotape of this conference.

The Medical Sharing Office and attorneys from the Office of the General Counsel who specialize in contracting have participated in several Office of Acquisition and Materiel Management (OAM&M) national teleconferences and symposia dealing with this special type of contracting. Similar OAM&M sponsored symposia are scheduled for the balance of this fiscal year.

In addition to the above actions, we have also taken or are planning to take the following steps to improve VHA employee compliance with VA policy on outside professional activities:

- We have expanded the preapproval process of outside professional activities requests, in those circumstances where the employee requests approval to work for an affiliated medical school or scare medical source contractor. VHA Directive 10-93-035, published on March 24, 1993, requires both District Counsel and local Personnel Officer review of all such requests, as well as all requests made by Chiefs of Staff. A nationwide conference call was held on April 22, 1993, to discuss the implementation of the directive. Directors, Chiefs of Staff, District Counsels, and Personnel Officers attended the conference call.

- In the near future, we plan to issue a new directive which will require VA medical center Directors to verify the status of their Chief of Staff's participation in outside professional activities. Coupled with VHA Circular 10-93-035, this new directive would strengthen the review and oversight of these activities for Chiefs of Staff.

We have undertaken all of these initiatives to ensure that needed scarce medical specialist services are appropriately procured and that applicable contracting and conflict of interest rules are followed. I believe that they will remedy the problems cited in the GAO and IG reports.

Ethics Program Activities Relating to Scarce Medical Specialist Services Contracts

The two primary roles of the ethics officer under the law are to provide education and advice as to the requirements of the ethics rules. The VA has expended increasingly large amounts of resources in carrying out these responsibilities.

All employees are charged with responsibility for knowing and obeying the applicable ethics restrictions. The ethics office has regularly provided the Department with ethics training, particularly in the last few years because of the new standards of conduct and the procurement integrity law. The ethics training regulation required that all current VA employees receive at least one hour of duty time to review the new standards of conduct. The ethics officer requested that all organizations complete this mandatory ethics orientation, and based on follow-up certifications, this orientation has occurred.

As examples of other ethics training, the ethics officer in 1991 conducted three regional three-day ethics workshops for VA directors, chiefs of staff and personnel officers, among others. Not counting the recent mandatory orientation, VA has conducted over 6,200 formal ethics training sessions since 1989. These training sessions cover

the conflict of interest prohibitions contained in the criminal statutes, the conduct regulations, and, since its enactment, the procurement integrity law. Where VHA employees are involved, these sessions include discussion of permissible and prohibited actions vis a vis the affiliate.

As part of a continuing ethics dialog, the ethics officer also participated in numerous director and chief of staff conferences held in connection with American Association of Medical Colleges meetings.

In addition to these education sessions, formal ethics advice and the thousands of pieces of informal ethics advice provided by the ethics officer and his staff in Central Office, and the District Counsel, who serve as deputy ethics officers in the field, also serve as particularized lessons on ethics issues for individual employees, managers or groups of employees.

OGE staff has participated with VA ethics staff in these training activities and has requested many of the materials VA prepared, such as case studies and outlines. OGE staff also commented at an OGE ethics training techniques seminar that VA had one of the most practical and progressive training programs in the Government.

Counseling and educational activities have increased substantially since the mid-1980's in the wake of the Office of Inspector General and other Government agencies' attention to conflict of interest issues.

The advice and counseling rendered by the ethics officer in matters pertaining to scarce medical specialist service contracts has been consistent with the law. Of the 27 pieces of written advice provided since 1974 which involve conflict of interest issues in the context of VHA and affiliated school employment, in only three instances was no conflict found. The remaining 24 opinions resulted in contract rejections, advising against the proposed actions, or warnings about potential conflict problems. OGE praised the VA ethics office's efforts in both education and counseling in its 1986 audit. In the 1992 audit, OGE

concluded that all the ethics opinions issued by the ethics officer over a two-year period appeared to be consistent with law.

The Government ethics system essentially limits the ethics officer's role to education and counseling. As to specific corrective action, the ethics officer is required by law and has in the past referred for possible criminal prosecution those cases in which there was reasonable cause to believe that a violation of the criminal conflict of interest statutes had occurred. Since 1980, three referrals were made by the ethics officer, and the District Counsel may have made additional referrals directly to their local U.S. Attorney.

Beyond providing advice, counsel and training to management and employees, and monitoring the effectiveness of the VA ethics program, the ethics officer -- consistent with the role created by the Government ethics scheme -- leaves the management of VA programs to VA program officials. Just as the Office of Government Ethics must leave the operation of the VA ethics program to the VA ethics official, the VA ethics officer must leave the operation of the Department's substantive programs to the appropriate VA officials who bear direct responsibility for those programs.

The core problem with conflict of interest violations involving VA physicians and scarce medical specialist services contracts is enforcement of these rules, not a lack of clear rules, or the presence of vague advice, or the level of ethics awareness. VA physicians and managers know or should know that they are prohibited by law and VA policy from participating personally and substantially in any Government contract which affects the financial interest of their outside employer. I want to assure you, Mr. Chairman, that VHA will enforce these rules through tighter contract review and monitoring, and, when necessary, appropriate discipline of violators.

The Larger Perspective

While the ethics compliance problems cited by the GAO are far too many, and indicate poor enforcement by VHA, I believe that the changes in procedures outlined previously will remedy this enforcement problem. More importantly from the perspective of the big picture, however, is the much larger number of facilities and scarce medical specialist contracts where no ethics problems were found. I wish to make the point as strongly as I can, Mr. Chairman, that despite the enforcement problems identified in the GAO report, both the special affiliation relationship and these contracts are beneficial to VA and are crucial to our ability to carry out our missions of providing quality health care to America's veterans and educating the Nation's health care manpower.

I am pleased to answer any questions which the Committee has, Mr. Chairman.

STATEMENT OF

STEPHEN D. POTTS
DIRECTOR, OFFICE OF GOVERNMENT ETHICS

ON

CONTRACTING FOR SERVICES OF SCARCE MEDICAL SPECIALISTS
AT THE DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS

UNITED STATES HOUSE OF REPRESENTATIVES

ON

MAY 19, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to appear today to discuss certain issues that arise as a result of the Department of Veterans Affairs contracting for services of scarce medical specialists. The Office of Government Ethics (OGE) is only in a position to speak generally about some of the issues you noted in your letter of invitation, but we are happy to be here to assist you with what information we can provide. I would, however, like to place OGE's role into some context before addressing your concerns.

The Office was established by the Ethics in Government Act of 1978 and made responsible for providing "overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency." The responsibilities of OGE fall into six general areas:

- regulatory authority -- develop, recommend and review statutes and regulations pertaining to conflicts of interest, post-employment restrictions, standards of conduct, and public and confidential financial disclosure in the executive branch.

- financial disclosure -- review executive branch public financial disclosure reports of certain Presidential appointees for actual or potential violations of applicable laws and regulations and recommend appropriate corrective action; administer executive branch blind trusts and the certificates of divestiture program.

- education and training -- implement statutory responsibility to provide information on, and promote understanding of, ethical standards in executive agencies.

- guidance and interpretation -- prepare formal advisory opinions, informal letter opinions and policy memoranda on how to interpret and comply with requirements regarding conflicts of interest, post-employment, standards of conduct, and financial disclosure in the executive branch; consult with agency ethics officials in individual cases.

- enforcement -- monitor agency ethics programs and review compliance, including those involving their

financial disclosure systems; refer possible violations of conflict of interest laws to the Department of Justice, and advise them on prosecutions and appeals; order corrective action or recommend disciplinary action in unique individual cases.

• evaluation -- evaluate the effectiveness of conflict of interest laws and regulations and recommend appropriate amendments.

The Office is organized into three major program units: Office of General Counsel and Legal Policy, Office of Program Assistance and Review and the Office of Education.

As a small agency, OGE cannot carry out the day-to-day operations of an ethics program for the over 5 million civilian and uniformed executive branch officers and employees. The Ethics in Government Act envisioned, and OGE therefore requires, that each agency head select a designated agency ethics official (DAEO) and provide the DAEO with the staff and the resources necessary to run the program in that agency. These DAEOs and their staffs then are responsible for conducting the Federal ethics program on-site: giving advice and guidance on matters of conflict of interest, financial disclosure, standards of ethical conduct and post-employment restrictions; educating employees about the statutes and standards; assisting in individual employee disciplinary actions; and implementing the agencies' public and confidential financial disclosure systems. These individuals make up the substantial majority of the "Federal ethics community" to which we communicate policy and regulatory changes. We provide telephonic and written legal advice; we issue memoranda on specific subjects (DAEOgrams); and we meet in conference annually and in small training workshops throughout the year to discuss programs and problems with them. We also have OGE desk officers assigned to work with agencies and DAEOs on a daily basis.

The Office of Program Assistance and Review performs oversight of ethics programs in executive branch departments and agencies. Visiting teams of OGE management analysts perform on-site reviews at agency headquarters, regional offices and military installations to review all elements of the ethics program and make recommendations to strengthen the program. Management analysts plan, conduct, and report their findings on the review of an agency program and then conduct follow-up activities until OGE is satisfied that the agency has taken appropriate steps to remedy any program deficiencies found and discussed in the report.

This type of program review was first conducted at the Department of Veterans Affairs in 1982, again in 1986 and more recently in 1991. In 1990 we issued two letter reports on the ethics programs at the Houston DVA Medical Center and the Houston DVA Regional Office. Copies of those reviews and reports have been provided to the Subcommittee previously and will provide the basis for our answers with regard to our knowledge of VA's policies and ethics counseling programs.

You also asked generally about outside employment restrictions for VA employees. Employees of the Department of Veterans Affairs are subject generally to the same restrictions relating to outside employment that apply to all other executive branch employees.

• Though not a direct restriction on outside employment, the basic criminal conflict of interest statute, 18 U.S.C. § 208, may indirectly limit outside activities. It bans employees from participating officially in Government matters where, for example, their outside employer or a person or organization with whom they are

negotiating, or have an arrangement concerning prospective employment, has a financial interest.

• For procurement officials, the procurement integrity provision of the Office of Federal Procurement Policy Act (41 U.S.C. § 423) provides additional restrictions on seeking employment with competing contractors during the conduct of a procurement.

• Two criminal conflict of interest statutes, 18 U.S.C. §§ 203 and 205, directly limit outside employment activities by prohibiting all executive branch employees from representing others in a private capacity before the executive branch or the courts (where the U.S. is a party or has a direct and substantial interest), whether compensated or uncompensated, as well as the sharing of compensation for such representation by others. Another statute, 18 U.S.C. § 209, prohibits an executive branch employee from receiving from a private source any salary, or supplementation of salary as compensation for performing official duties.

• The Ethics Reform Act of 1989 significantly restricted outside employment of executive branch employees when it banned receipt of honoraria for any speech, appearance or article (5 U.S.C. app. §§ 501-505). These civil statutory provisions also banned senior level noncareer employees from receiving compensation for professional services which involve a fiduciary relationship (either individually or as an affiliate with entities providing such services), from receiving compensation as a board member of an outside entity, from receiving compensation for teaching (except with prior approval), and from allowing use of their name by any outside entity.

In addition to these statutory restrictions, on February 3, 1993, a uniform set of standards of conduct for all executive branch employees went into effect. Prior to this time each agency had individual standards of conduct for its employees based upon a 1965 executive order and 1966 model regulation. Now, outside employment of all executive branch employees is also governed by the standards of conduct regulation, 5 C.F.R. part 2635, based on Executive Order 12674.

• Subparts D, E, and F of this regulation define the conflict of interest provisions of 18 U.S.C. § 208, which may indirectly limit outside employment as explained above. Those subparts also expand the statutory conflict concepts to encompass appearances, and they describe when conflicting interests (including outside employment and seeking employment) would require recusal from Government duties or termination of the outside employment or the seeking of employment.

• Subparts G and H of the standards of conduct more directly regulate outside employment. Employees may not use public office for private gain, use nonpublic information, use Government property or assets, or use Government time. Additionally, an employee may not engage in outside employment which conflicts with official duties, either because of a statutory or agency regulatory provision or because it would materially impair the employee's ability to perform assigned duties by reason of

disqualification in critical matters to avoid financial or other conflicts. The regulation also provides extensive guidance on the restrictions applicable to outside teaching, speaking and writing. For example, compensated teaching, speaking and writing are not authorized where there is a relationship to the Government position by reason of the nature of the offer or the nature of the subject matter. Finally, the regulation authorizes agencies to issue supplemental regulations providing additional restrictions on specific types of employment and requiring prior approval for certain types of outside employment.

With regard to additional Department-specific restrictions on outside employment and activities, we will defer to the Department for a complete description of those statutory or regulatory restrictions.

As a general summary of all these provisions, however, any outside employment with an organization with which an employee must also deal officially will raise a question of conflict of interest which needs to be addressed.

I will be happy to respond to any questions you may have.

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSES

CHAIRMAN EVANS TO GENERAL ACCOUNTING OFFICE

RESPONSES TO POST-HEARING QUESTIONS

1. "The flexibility to use the affiliate as a sole source on these (scarce medical specialist) contracts is essential to maintaining the integrity of accredited educational programs and the quality of care to veterans," according to the prepared statement submitted by Dr. Holsinger."

1a. Do you agree with this statement?

As explained in our responses to questions 1b. and 1c. below, we do not agree that the integrity of accredited educational programs and the quality of care to veterans cannot be maintained without the flexibility to use affiliates as a sole source on scarce medical specialist contracts.

1b. Do you agree that VA sole source contracts with affiliates are "essential to maintaining the integrity of accredited educational programs ..."? Please explain your response.

We believe that VA medical centers could maintain the integrity of accredited educational programs without the exclusive use of sole source contracts with affiliates. We recognize that it is essential that physicians have appropriate teaching credentials if they are to be involved in the supervision of residents. To help ensure that this requirement is met, VA centers would need to identify which contract physicians would supervise residents and take appropriate steps to ensure that the organization which is awarded a competitively-bid contract could provide physicians with appropriate teaching credentials.

1c. Do you agree that VA sole-source contracts with affiliates are "essential to maintaining the ... quality of care to veterans"? Please explain your response.

We do not agree that VA sole source contracts with affiliates are "essential to maintaining the ... quality of care to veterans". Dr. Holsinger testified during the Subcommittee's May 19 hearing that about one-third of VA's scarce medical resource contracts are already competitively awarded. Presumably, these contractors' performances meet VA's quality of care standards.

2. If all VA scarce medical specialist contracts were awarded competitively, would the quality of health care provided veterans by VA be necessarily lower? Please explain your response.

We do not believe that the quality of health care provided to veterans would necessarily be lower if VA medical centers awarded all scarce medical specialist contracts competitively. As previously noted, organizations awarded contracts should be required to meet VA's quality standards and, although it is difficult to forecast the availability of qualified bidders, it would seem reasonable to expect that there are other qualified organizations that could provide a quality of care comparable to that now being received.

QUESTIONS SUBMITTED BY
HONORABLE LANE EVANS, CHAIRMAN
SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS

VA SCARCE MEDICAL SPECIALIST PROGRAM: ARE ETHICS POLICIES AND ENFORCEMENT ADEQUATE?

MAY 19, 1992

QUESTIONS TO MR. STEPHEN A. TRODDEN
INSPECTOR GENERAL
DEPARTMENT OF VETERANS AFFAIRS

1. **Question:** The Office of Inspector General has recommended VA attempt to recover from contractors excess contract costs paid by the Department.

   Please report on VA's record during the last five years of recovering excess contract costs paid by the Department to contractors.

   What steps should VA take to recover more of the excess contract costs paid by the Department?

   Answer: The problem of excess costs on scarce medical specialist contracts was not well recognized until my staff completed our recent audit of these contracts. To the best of our knowledge, before the audit the Veterans Health Administration (VHA) had not attempted to recover any excess charges.

   At the VA medical centers where we identified excessive costs, management has agreed to pursue recovery by first asking the contractor to voluntarily refund overcharges and to bring the contract price into line with costs. If this approach is not successful, then the issue will be referred to the responsible VA District Counsel for resolution. As of June 15, 1993, only one medical center, VAMC Long Beach, had reported a successful recovery. In this instance, the medical center collected about $205,000 and expects to collect another $107,000 by September 30, 1993.

   To recover more of such excessive charges, VHA is proceeding with its one-time review of all active contracts, as recommended by our audit. VHA has agreed to pursue recovery of excessive costs identified by its review. If a contractor will not voluntarily refund excessive charges, then the local District Counsel will have to decide whether to pursue the issue.

2. **Question:** "The flexibility to use the affiliate as a sole source on these (scarce medical specialist) contracts is essential to maintaining the integrity of accredited educational programs and the quality of care to veterans," according to the prepared statement submitted by Dr. Holsinger.

   Do you agree with this statement?

   Do you agree that VA sole source contracts with affiliates are "essential to maintaining the integrity of accredited educational programs ..."? Please explain your response.

   Do you agree that VA sole source contracts with affiliates are "essential to maintaining the ... quality of care to veterans"? Please explain your response.

Answer: We do not take a position of complete agreement or disagreement with Dr. Holsinger's statement, but offer the following comments:

Regarding the issue of whether VA's sole source, non-competitive contracts for scarce medical specialists with affiliated medical schools are essential to maintaining the integrity of accredited educational programs, we believe Dr. Holsinger raises some concerns that may be valid. We are told that affiliated medical schools consider it absolutely necessary to have their own faculty personnel provide training in the clinical practice portions of their resident educational programs, and sole source contracts with VA medical centers accomplish this. However, since few scarce medical specialist contracts in VA have been competed (versus being sole source), we have no empirical data to support or refute whether this degree of control by medical schools is essential. Further, Dr. Holsinger is apparently referring to the possibility that a medical school might withdraw its residents from the affiliated VA medical center if the school could not obtain a sole source contract with the medical center. Since medical school residents- and fellows-in-training perform a significant portion of the clinical practice work at their affiliated VA medical centers, it is arguable that should medical schools decide to withdraw their residents from an affiliation program, contract costs for scarce medical specialists services could increase. However, most VA contracts for scarce medical specialist services are for radiology and anesthesiology services, and VA has relatively few residents in these specialties. Even if a school were to withdraw its residents in these specialties, it should not significantly affect the overall training program. We do not believe it likely that a medical school would risk its affiliation with VA over the issue of whether the school had a scarce medical specialist contract with the affiliated medical center.

Regarding the issue of whether VA's sole source, non-competitive contracts for scarce medical specialists with affiliated medical schools are essential to maintaining the quality of care to veterans, we have a difference of opinion with Dr. Holsinger's stated position. We believe that, under an affiliation agreement, the medical school is responsible for providing education whereas the VA medical center is responsible for providing clinical care services. In fulfilling this responsibility, the medical center must independently ensure that optimal quality care is provided at the center, whether the provider is a member of the center's medical staff, a consultant, a competitive contractor, or a member of the affiliated medical school's faculty who is operating under a sole source contract. For scarce medical specialties, each provider generally must be board certified and meet the same clinical competency standards. Thus, in our opinion the flexibility to use the affiliate as a sole source on scarce medical specialist contracts is not necessarily essential to maintaining the quality of care to veterans.

3. **Question:** Is the quality of veteran health care purchased by VA under competitively awarded scarce medical specialist contracts inferior to or lower than the quality of veteran health care purchased by VA under noncompetitively awarded scarce medical specialist contracts? What evidence supports your response?

Describe any differences in quality of veterans health care purchased by VA under (a) competitively awarded and (b) noncompetitively awarded scarce medical specialist contracts.

Answer: We have not reviewed the question of whether the quality of health care is different under competitive and noncompetitive contracts. However, based on our experience we do not believe there should be any significant difference. The reason for this is that the VA medical center, not the contractor, is responsible for ensuring the quality of care. Each medical center has a quality assurance (QA) program that must monitor the quality of all care, regardless of whether it is provided by VA staff, by consultants, or by contract staff. Care provided under both competitive and noncompetitive contracts would have to meet VA's quality standards. Notwithstanding this viewpoint, we acknowledge that someone could have concerns about the quality of care provided by physicians not affiliated with a medical school. While the QA process at VA medical centers does monitor the quality of care, our experience has also shown that this process is not always accomplished in an effective and/or timely manner.

QUESTIONS SUBMITTED BY
HONORABLE LANE EVANS, CHAIRMAN
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

VA SCARCE MEDICAL SPECIALIST PROGRAM: ARE ETHICS POLICIES AND ENFORCEMENT ADEQUATE?

MAY 19, 1993

Question 1: According to your prepared statement, "The flexibility to use the affiliate as a sole source on these (scarce medical specialist) contracts is essential to maintaining the integrity of accredited educational programs and the quality of care to veterans."

Question 1a: Please explain why sole source contracts with affiliates are "essential to maintaining the integrity of accredited educational programs ..."

Question 1b: Please explain why sole source contracts with affiliates are "essential to maintaining the ... quality of care to veterans."

Answer: Sole source contracts with affiliates are essential to maintaining the integrity of accredited education programs and quality of care to veterans because these contracts enable the VA to maintain its educational programs by contracting for the services of physicians who are members of the medical school faculty and are therefore capable of providing the full range of research, teaching and patient care. Without faculty members to teach the residents, the VA medical center could not engage in a residency program with the medical school. Within the context of the VA-medical school affiliation relationship, the contract preserves the affiliation and the comprehensive services of the entire faculty-resident-student partnership.

Contract physicians who have faculty appointments are part of the patient care/education team and, therefore, have the credentials and skills to interact with the other faculty who are VA staff physicians, provide technical and professional direction to residents and provide patient care of comparable level of sophistication and expertise. It is particularly critical in specialties such as anesthesia and radiology, where the services are ordered by the patient's primary physician or surgeon, who is a university faculty member of the VA staff. These clinical and teaching services must be provided at an academically-equivalent level. Many tasks rely on the collegial and professional ethos that permits and enables the affiliate faculty to act as a collective group practice across all the hospitals and residency programs. These tasks include physician peer interaction in the management of difficult cases, the availability of consultation and support in emergencies, and the ability to plan and carry out a comprehensive resident training program integrating the VA and other hospitals of the academic medical center.

(Page 2)

HONORABLE LANE EVANS

Question 2: Please explain why veteran health care services procured by VA using competitively awarded scarce medical specialist contracts would be injurious to the quality of care provided veterans by VA.

Answer: There is no evidence to show that competitively awarded contracts would be injurious to the quality of care provided veterans. However, the policy goal of VHA is to obtain comprehensive services equivalent to what can be provided by a VA staff physician. Where VA staff physicians are integral members of the medical school faculty and provide coordinated health care, education and research, the contract physicians should be of equivalent skill and stature.

Question 3: Is the quality of veteran health care purchased by VA under competitively awarded scarce medical specialist contracts inferior to or lower than the quality of veteran health care purchased by VA under noncompetitively awarded scarce medical specialist contracts? What evidence supports your response?

Answer: There is no objective way to compare quality of care between contracts awarded competitively or noncompetitively. Monitoring quality of health care is the responsibility of our local VAMCs. Local managers provide oversight of all contracts. Since VAMCs are certified by the JCAHO (Joint Commission for the Accreditation of Health Organizations), we are required to conduct ongoing quality assurance (Q/A) reviews. That Q/A process is applicable to all patient care. Additionally, all VA physicians must go through a credentialing process to ensure that we hire competent and qualified doctors. These measures help us insure a high quality of care at all of our health care facilities.

Question 4a: During the last five years, how many affiliated VA medical centers have competitively awarded a scarce medical specialist contract?

Answer: Beginning in Fiscal Year 1991, a computer data base was developed to systematically collect this type of information concerning our scarce medical specialist services (SMSS) contracts. Information concerning prior years is not readily available because the paper records are routinely retired and sent to a Federal Records Center for storage after two years.

HONORABLE LANE EVANS

In Fiscal Year (FY) 1991, 83 affiliated VA medical facilities awarded competitive SMSS contracts. In FY 1992, 81 affiliated VA medical facilities awarded competitive SMSS contracts.

Question 4b: How many scarce medical specialist contracts have been awarded competitively during the last five years by affiliated VA medical centers?

Answer: In FY 1991, we had a total of 378 SMSS contracts in place. Of these, 230 were awarded competitively by affiliated VA medical centers. In FY 1992, we had a total of 314 SMSS contracts in place. Of these, 166 were awarded competitively by affiliated VA medical centers.

With the physicians' pay bill and the controls placed on SMSS contracting, the cost of this program has been on a downward trend. We expect it to drop even lower during the next few years.

Information concerning prior years is not readily available for the reasons stated in the answer to Question 4a.

Question 4c: Of the scarce medical specialist contracts competitively awarded by affiliated VA medical centers during the last five years, how many were awarded to: (A) an affiliated medical school; (B) an unaffiliated medical school; (C) a practice group?

Answer: (A) During FY 1991 and FY 1992, VA medical centers did not competitively award any SMSS contracts to affiliated medical schools.

(B) During FY 1991, VA medical centers awarded a total of only 9 competitive SMSS contracts to unaffiliated medical schools. In FY, 1992, VA medical centers awarded only 6 competitive SMSS contracts to unaffiliated medical schools.

(C) During FY 1991, VA medical centers awarded 79 competitive SMSS contracts to practice groups. During FY 1992, VA medical centers awarded only 18 competitive SMSS contracts to practice groups.

The remaining SMSS contracts that were awarded during FY 1991 and FY 1992 were to individuals and clinics eligible to enter into these contracts with the VA under Title 38 U.S.C. Section 7409.

Information concerning prior years is not readily available for the reasons stated in the answer to question 4a.

(Page 4)

HONORABLE LANE EVANS

Question 5: Is every physician who provides services to VA under a scarce medical specialist contract noncompetitively awarded to an affiliated medical school, a member of the affiliated medical school faculty?

Answer: Yes.

Question 6: How many scarce medical specialist contracts noncompetitively awarded to medical schools by an affiliated VA medical center during the last five years (a) have and (b) have not required the physicians providing services in VA under the contract to have a faculty appointment with the affiliated medical school or to be eligible for such faculty appointment?

Answer: All physicians under contract are members of the faculty of the affiliated medical school.

Question 7a: Does every physician who provides services to VA under a scarce medical specialist contract awarded to an affiliated medical school, supervise medical residents in the awarding VA medical center?

Answer: Physicians on contract do not provide management supervision. However, when a contract physician is working as a staff practitioner at a VA medical center, an integral part of that physician's duties may be to oversee resident physicians. "Supervision" in this context refers to the authority and responsibility that a staff practitioner exercises over the care delivered to a patient by a resident. Such control is exercised by observation, consultation and direction, and includes the imparting of knowledge, skills and attitudes by the practitioner to the resident. The exact duties of a contract physician will vary from site-to-site, based on the needs of the VA medical center. However, it is expected that the vast majority of contract physicians do provide clinical oversight of residents.

Question 7b: What percent of the physicians who provide services under a scarce medical specialist contract awarded to an affiliated medical school by a VA medical center, supervise medical residents in the awarding VA medical center?

Answer: None of the contract physicians provide management supervision over VA residents. VA may not contract out management supervision of its own employees. 48 C.F.R. §837.271-3(b). However, when contract physicians are working as staff practitioners at a VA medical center, they often provide technical direction to residents and teach residents as part of their VA duties.

(Page 5)

HONORABLE LANE EVANS

Question 8a: How many scarce medical specialist contracts noncompetitively awarded by VA to an affiliated medical school (A) require and (B) do not require contractor employees to provide resident supervision?

Answer: VA may not contract out management supervision of its own employees. (See 48 C.F.R. 837.271-3(b).) However, individual physicians on contract, as part of their required duties, may be required to provide oversight of clincial care involving residents.

Question 8b: How many scarce medical specialist contracts noncompetitively awarded by VA to an affiliated medical school (A) permit and (B) do not permit contractor employees to provide resident supervision?

Answer: See answer to question 7b.

Question 8c: How many scarce medical specialist contracts competitively awarded by VA to an affiliated medical school (A) require and (B) do not require contractor employees to provide resident supervision?

Answer: See answer to question 7b.

Question 8d: How many scarce medical specialist contracts competitively awarded by VA to an affiliated medical school (A) permit and (B) do not permit contractor employees to provide resident supervision?

Answer: None of the contract physicians provide management supervision. However, when a contractor is working as a staff practitioner at a VA medical center, "supervision" refers to the authority and responsibility that a staff practitioner exercises over the care delivered to a patient by a resident. Such control is exercised by observation, consultation and direction, and includes the imparting of knowledge, skills and attitudes by the practitioner to the resident.

Question 8e: How many scarce medical specialist contracts competitively awarded by VA to a provider other than an affiliated medical school (A) require and (B) do not require contractor employees to provide resident supervision?

Answer: None of the contract physicians provide management supervision. However, when a contractor is working as a staff practitioner at a VA medical center, "supervision" refers to the authority and responsibility that a staff practitioner exercises over the care delivered to a patient by a resident. Such control is exercised

by observation, consultation and direction, and includes the imparting of knowledge, skills and attitudes by the practitioner to the resident.

Question 8f: How many scarce medical specialist contracts awarded by VA to a provider other than an affiliated medical school (A) permit and (B) do not permit contractor employees to provide resident supervision?

Answer: None of the contract physicians provide management supervision. However, when a contractor is working as a staff practitioner at a VA medical center, "supervision" refers to the authority and responsibility that a staff practitioner exercises over the care delivered to a patient by a resident. Such control is exercised by observation, consultation and direction, and includes the imparting of knowledge, skills and attitudes by the practitioner to the resident.

Question 9: Describe the nature of the relationship between VA scarce Medical specialist contracts with affiliated schools of medicine and the accredited medical education programs of those affiliated schools of medicine.

Answer: The relationship between VA scarce medical specialist contracts with affiliated schools of medicine and the accredited medical education programs is that the services provided under such contracts are provided by members of the faculty of the affiliated school. In that capacity they provide graduate training for VA residents, as well as the full panoply of education, research and coordinated health care in an academic setting at the VAMC. This will ensure that the highest quality of care is delivered to our veteran patients, as well as the best training for our residents.

QUESTIONS SUBMITTED BY
HONORABLE JACK QUINN
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

VA SCARCE MEDICAL SPECIALIST PROGRAM: ARE ETHICS POLICIES AND ENFORCEMENT ADEQUATE?

MAY 19, 1993

Question 1: The Inspector General has questioned costs totaling $1,391,691 involving 15 contracts at 7 medical centers. What, if anything, can be done to recapture these excessive costs?

Answer: The VA Medical Center Directors involved with these 15 contracts have agreed to conduct reviews to determine the actual amount of excessive costs and to pursue recovery of any excessive costs, including referral to District Counsels if necessary. The Inspector General's office, which maintains the Department's audit follow-up systems, will track the amounts due until recovery or write-off.

Question 2: Please comment on the IG findings that non-contracting officials such as chiefs of staff and clinical services chiefs often stepped in and took on contracting officer responsibilities for SMS contracts. Federal Law prohibits managers from participating in such activities.

Answer: Twenty-three instances of possible conflicts of interest were referred to the IG's Office of Investigations as a result of the audit. Special Agents from the Office of Investigations currently are reviewing contract files, financial disclosures, and other documents to determine if any possible violations of Federal law occurred. If so, a prosecutive opinion will be sought from the Department of Justice. As a minimum, referrals of alleged ethics violations will be referred to VA's Ethics Officer for possible recommendation of administrative action.

ISBN 0-16-041576-4